

## ARTICLE 10. VACATIONS AND CORRECTIONS

### 100 Vacation of Unrecorded Plat.

- A. Upon written request of the subdivider to the Planning Commission, a preliminary or final plat may be withdrawn from consideration either before or after approval by the Commission. Upon approval of the request by a motion of the Commission, the Subdivision Administrator is automatically directed to remove the case file from the City records.
- B. Upon written request of the subdivider to the Clerk, a final plat for which dedications, if any, have been accepted by the applicable Governing Body may be vacated by motion of such Governing Body; provided, that (1) the plat has not been recorded; (2) no lots have been sold or transferred; and (3) no improvements have been installed. After the plat is vacated, the Administrator shall see that all fiscal sureties are returned to the subdivider except for those expenditures which have been incurred by the City or County in administrative, legal or engineering costs prior to the date of the request for vacation. Upon the return of such sureties, the Administrator is automatically directed to remove the case file including any petitions from the City records.
- C. Upon determining from the County Register of Deeds that a final plat has not been recorded within 60 days from its final acceptance by the Governing Body or within 15 days after a final acceptance by the County Governing Body under the preconstruction procedures of Section 7-104C, the Administrator shall notify the subdivider that the plat is null and void and that the case file will be removed from the City records within 30 days unless a reapplication for platting is received during that time. (See Section 4-112 for Recording of Final Plat.)

### 101 Vacation of Recorded Plat.

- A. (Inside the City or in the extraterritorial subdivision jurisdiction area.) Recorded plats may be vacated by either replatting according to Section 10-101A1 below or directly vacated according to Section 10-101A2:
  1. According to K.S.A. 12-512b, any recorded plat or part thereof or street, alley or other public reservation, including, without limitation, easements, dedicated building setback lines and access control, whether established by instrument, condemnation or earlier plats, shall be vacated both as to use and as to title without any further proceedings upon the filing and recording with the County Register of Deeds in accordance with K.S.A. 12-403, any plat or replat duly executed in accordance with these regulations which embraces the same lands as those heretofore embraced by the earlier plat or part thereof or street, alley or other public reservation. Streets, alleys or other public reservations which may be vacated shall revert, as provided for in K.S.A. 12-506, to abutting property owners according to their frontage thereon; provided, that such land to be reverted was derived directly or indirectly from the owner of the land from which such street, alley or public reservation was originally platted. The proper completion of the Owner's Certificate and Dedication as required by Section 5-101 Q 2 shall constitute appropriate notice to all persons having property rights or interests affected by the above platting or replatting.

2. Recorded plats may also be vacated without replatting. The procedure is the same as provided for in Section 10-103.

**102 Correction of Platting Errors.** According to K.S.A. 12-420, procedures are provided to correct certain platting errors. If, after recording a final plat, an error is found in distances, angles, bearings, subdivision or street names, block or lot numbers, the computation of dimension or elevation or other details of the plat, except in connection with the outer boundaries of the plat, and if the property described in that part of the plat containing the error is under the ownership of the person who caused the plat to be prepared, the applicable City or County Engineer, after substantiation of the existence of the error, may file an affidavit with the County Register of Deeds that the error was made. The affidavit shall describe the nature and extent of the error and the appropriate correction. The Register of Deeds shall record the affidavit and shall place in the margin of the recorded plat a notation that the affidavit has been filed, the date of filing and the book and page where it is recorded. The filing of the affidavit shall correct any such errors, but shall have no effect on the validity of the plat or any property interest recorded by reference thereto. A copy of the recorded affidavit shall be filed with the Subdivision Administrator. The City will bill the person requesting the correction for engineering costs and recording fees.

**103 Vacation of Streets, Alleys, Easements and Plats.**

- A. (Inside the City only.) According to K.S.A. 12-504 and 505, the following procedures are provided to vacate streets, alleys or other public reservations such as, but not limited to public easements, dedicated building setback lines, access control, or a part thereof, and including all or parts of recorded plats:\*

  1. Petitions for vacations received from the Governing Body, the owner of platted land or the owner of land adjoining on both sides of any street, alley, easement or other public reservation may be filed with the Clerk and transmitted to the Subdivision Administrator for processing. All may nongovernmental petitioners will be billed a processing fee. (See Section 3-109 for Fees.) The Planning Commission shall give public notice of a hearing on a proposed vacation by publication once in the official city newspaper by the Subdivision Administrator. **At least 20 days shall elapse** between the date of such publication and the date set for such hearing. Such notice shall state (1) the nature of the vacation petition, (2) the legal description of the property and (3) the date, time and place for the hearing before the Planning Commission. The notice may contain the information that the hearing may be adjourned from time to time upon a motion to continue in the future at some stated date, time and place. Furthermore, the Commission by rule shall mail a notice to all affected utility providers; all owners of land proposed for vacation; all landowners abutting a street, alley or easement including any segment remaining open; and owners on the opposite side of the street from vacations of setbacks and access control. The petitioner(s) shall provide a list of such landowners as required by the Subdivision Administrator, including names, addresses and zip codes. Such notice to providers and landowners shall be mailed so that **at least 20 days shall elapse** between the mailing date and the hearing date.

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\*Note: The same statutory procedure may be used to exclude a portion of land from the boundaries of the City, i.e., the land could also be "deannexed".

2. The Planning Commission shall hold a public hearing to consider a recommendation to the Governing Body as to whether the vacation should be approved or disapproved and with or without conditions attached. At the hearing, the Planning Commission shall hear such testimony as may be presented or as may be required in order to fully understand the true nature of the petition and the propriety of recommending the same. If the Planning Commission determines from the testimony presented that:
  - a. due and legal notice has been given;
  - b. no private rights will be injured or endangered;
  - c. the public will suffer no loss or inconvenience; and
  - d. in justice to the petitioner(s) the vacation should be granted;

then, the Planning Commission shall recommend that such vacation be approved and entered at length in the minutes. Such recommendation may provide for the reservation to the City and/or the owners of any lesser property rights for public utilities, rights of way and easements for public service facilities originally located in such vacated land or planned for the future. The recommendation may be conditioned upon the petitioner's responsibility to remove or relocate all underground or surface utilities or paving in or on the vacated land. The petition shall not be recommended by the Planning Commission nor granted by the Governing Body if a written objection is filed with the Clerk, at or before the hearing, by any owner who would be a proper party to the petition, but has not joined therein. Furthermore, when only a portion of a street, alley or public reservation is proposed to be vacated, the petition shall not be recommended by the Planning Commission nor granted by the Governing Body if a written objection is filed with the Clerk by any owner of lands which adjoin the portion to be vacated. The recommendation of the Planning Commission to the Governing Body shall be made in the same manner as provided by K.S.A. 12-752 for the submission and approval of a final plat. (See Sections 4-107 and 108 for the 60-day time period for consideration of a plat and Section 4-110 for Governing Body approval procedure.) The Planning Commission shall announce at their hearing when the Governing Body will consider the recommendation on the vacation.

Following the approval of the vacation by the Governing Body in the form of an order, the Clerk shall certify a copy of the order to the County Register of Deeds; however, such certification shall be withheld until such time as any conditions attached to the order have been satisfied. The Register of Deeds shall note on the recorded plat of the "townsite," i.e., the City, or the applicable platted addition, the words, "canceled by order" or "canceled in part by order" and give the book and page where recorded.

B. (In the extraterritorial subdivision jurisdiction area only.)

According to K.S.A. 58-2613 through 2615, the following procedures are provided to vacate streets, alleys, public easements or public reservations, e.g., building setback lines and access control, and including all or parts of recorded plats:

1. The owners of any platted land proposed for vacation or the adjoining owners on both sides of any street, alley, public easement or public reservation, or part thereof, may file a petition to vacate with the Board of County Commissioners. Upon such filing, the County Commissioners shall fix a date, time and place for a hearing and publish a notice in the official county newspaper. At least **20 days shall elapse** between the date of such publication and the date set for the hearing. State statutes also require that notice of the hearing be given to the City Governing Body and the Planning Commission.

If the Commissioners are satisfied at the hearing that:

- a. proper notice has been given;
- b. the public will suffer no loss or inconvenience; and
- c. no private rights will be injured or endangered;

then the Commissioners shall order such vacation be made and entered in the minutes of the proceedings. Such order shall protect and provide for the property rights of public utilities, rights of way and easements for public service facilities in existence and use. No such vacation shall be granted; however, if the City Governing Body protests against such vacation. Furthermore, when only a portion of a street, alley or public reservation is proposed to be vacated, the petition shall not be granted if a written objection is filed with the County Clerk by any owner of land which adjoins the portion to be vacated. The Clerk shall record a certified copy of the order with the County Register of Deeds. The petitioner shall pay the Clerk any cost of the proceedings including publication and recording costs.

2. Prior to the above hearing by the Board of County Commissioners, the Planning Commission shall hold a public hearing to consider a recommendation to the Governing Body as to whether the vacation should be recommended for approval by the County Commissioners with or without conditions attached or protested against. The Commission by rule shall mail a notice **10 days before the hearing** to all affected utility providers; all owners of land proposed for vacation; all landowners abutting a street, alley or easement including any segment remaining open; owners on the opposite side of the street from vacations of setbacks and access control; and the County Engineer. The petitioner(s) shall provide a list of such landowners as required by the Subdivision Administrator, including names, addresses and zip codes. All nongovernmental petitioners will be billed a processing fee. (See Section 3-109 for fees.) The Planning Commission shall announce

at their hearing when the Governing Body will consider the vacation and the date, time and place of the County Commissioners' hearing. Unless the Governing Body deems it desirable to protest the vacation, a resolution shall be adopted to recommend the vacation to the County Commissioners which may or may not be subject to conditions. If conditions are required, the City Clerk may refrain from certifying the resolution until such time as the conditions are satisfied. After certification, the City Clerk will provide the petitioner with a copy of the resolution to be submitted to the County Commissioners.

3. In the event that the County has designated their planning board to hold the public hearing on the vacation, the certified resolution should be submitted for their hearing.