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**AN ORDINANCE TO ESTABLISH PROCEDURES AND POLICIES FOR THE  
VACATION OF ANY STREET, ALLEY, OR DEDICATED PUBLIC WAY PURSUANT  
TO PETITION**

Sponsored by Councilmembers Daves and Richardson

WHEREAS, State law authorizes the City Council, as the governing body of the City of Mobile, to vacate, in whole or in part, streets, alleys, and dedicated public ways in accordance with certain mandated procedures and when such vacation is determined by the Council to be in the public interest; and,

WHEREAS, Section 11-49-6 of the Code of Alabama authorizes the Council, as the governing body of the City of Mobile, to require abutting landowners to pay a vacation of right-of-way fee as a condition to the Council's exercise of the power to vacate any street, alley, or dedicated public way; and,

WHEREAS, the decision to vacate any street, alley, or dedicated public way is committed to the legislative discretion of the Council; and

WHEREAS, in the exercise of its legislative powers the Council desires to set forth in this Ordinance the policies and procedures to be followed for the vacation of any street, alley, or dedicated public way pursuant to petition.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that Section 57-17 of the Mobile City Code is hereby amended and restated so that it now reads in its entirety as follows:

SECTION 57-17.

VACATION OF STREETS,  
ALLEYS AND PUBLIC WAYS BY PETITION.

**SECTION ONE. PROCEDURES.**

**(A). FILING OF PETITION WITH CITY CLERK.**

(1). Subject to the conditions and requirements of applicable State law and this Ordinance, the owner or owners of land abutting any street, alley, or dedicated public way, including unused rights-of-way, may petition the City Council to have the street, alley, or public way vacated, in whole or in part.

(2). Any person who desires to vacate a street, alley, or dedicated public way, open or unopen, shall submit to the City Clerk a written petition requesting that the street, alley, or public way be vacated. The written petition must contain notarized signatures evidencing the consent of all of the following:

- (a) the owner(s) of the land abutting the street, alley, or public way to be vacated; and,
- (b) if the petition requests the vacation of an open, paved street, alley or public way, the owner(s) of any land contained within any platted subdivision in which the street, alley, or public way to be vacated is located; and,
- (c) if the petition requests the vacation of an open, paved street, alley or public way, the owner(s) of any land within 300 feet of the area of such street, alley, or public way to be vacated.

(3). When the written petition is submitted, the person(s) submitting the petition shall provide the following to the City Clerk with such petition:

- (a). the correct legal description of the area sought to be vacated;
- (b). a plat or survey that clearly shows in detail:
  - (i) the area sought to be vacated;
  - (ii) the location of all lots or tracts of land that abut the area sought to be vacated;
  - (iii) the square footage of the area sought to be vacated;
  - (iv) the square footage of each lot or tract of land that abuts the area sought to be vacated.
- (c). the current year assessed value, as determined by the Mobile County Revenue Commissioner, of all lots or tracts of land that abut the area sought to be vacated.
- (d). If the petition requests vacation of a paved street or public way open to vehicular traffic, then a traffic impact study and report prepared by a transportation engineer in accordance with the recommendations of the Institute of Transportation Engineers must be submitted with the petition. The study must show that the proposed vacation will not impede the orderly flow of traffic within 300 feet of the street or public way to be vacated, and, if applicable, the platted subdivision in which such street or public way is located.
- (e). If the petition requests vacation of a paved street or public way open to vehicular traffic, then an agreement must be signed by all persons requesting the vacation and submitted to the City Clerk wherein those persons jointly and severally agree to indemnify and hold the City of Mobile, and its officials and employees, harmless of and from any costs, expenses, and attorney fees that

may be incurred in connection with any litigation that may be brought by any person or entity challenging the decision to vacate the street, alley, or public way. Such indemnification and hold harmless agreement shall be in a form approved by the Clerk.

- (f). Three (3) sets of printed adhesive labels containing the names and addresses of the owner(s) of any applicable land referred to in Section One, sub-sections (A).(2).(a), (A).(2).(b) and (A).(2).(c) of this ordinance.

(4). The person(s) submitting the petition shall pay a \$100.00 fee to the Clerk at the time that the petition is submitted.

(5). The person(s) submitting the petition, or their designee, shall be responsible for notifying in writing all utility companies (including but not limited to Mobile Area Water and Sewer System, Alabama Power, Spire, AT&T, and Comcast Cable), and any other person or entity that has any easement or right-of-way that would be affected by the proposed vacation, of the proposed request for vacation. Such notification shall contain a request that the utility or other easement or right-of-way holder consent in writing to the vacation, or submit written objection thereto. Such written responses from the utilities or other easement or right-of-way holders shall be provided to the City Clerk at the time that the written petition is submitted.

(6). A petition will not be considered to have been submitted until all of the requirements of this section have been met, unless otherwise permitted by the laws of the State of Alabama.

(7). The State of Alabama, Mobile County, Alabama, and other governmental and quasi-governmental agencies or entities shall be exempt from the requirements of subsections (A)(2)(b), (A)(2)(c), (A)(3)(d) and (A)(3)(e) of this Section One.

**(B). REVIEW BY CITY DEPARTMENTS AND OFFICIALS.**

(1). Following receipt of the written petition, the City Clerk will forward the petition and any other submitted documentation to the Mayor, the city engineer, the city traffic engineer, the chief of police, the chief of the fire-rescue department, the city attorney, the council attorney, the real estate department, the right-of-way department, and the community and housing development department, for their review and comment. Written comments and objections from such persons or departments, if any, must be received by the City Clerk within thirty (30) days thereafter in order to be considered by the Council.

(2). Before the petition may move forward City Clerk must receive written communication from the Chief of Police stating that the vacation is in the interest of public safety and from the Chief of the Fire Rescue Department stating that the vacation is consistent with applicable fire codes and will not hinder the Fire Rescue Department in responding to fire or rescue situations. The statement of the Chief of Police should include the data upon which he bases his conclusions.

**(C). SCHEDULING OF PUBLIC HEARING.**

(1). After the time period for submission of comments and any objections from city officials or departments has elapsed, the person(s) submitting the petition shall provide

the Clerk with a declaration of vacation signed by all abutting landowners to the area sought to be vacated, and a proposed Council resolution assenting to the proposed vacation, in forms approved by the Clerk. Upon receipt of the declaration after the City official/department commentary period expires, the Clerk will prepare a resolution to set a public hearing on said proposed vacation to be presented to the City Council. The director of urban development and planning, the city engineer, and the city traffic engineer, or their respective designees, may attend the public hearing and shall be entitled to speak and respond to any council inquiries on the issue. They shall also be entitled to make known to the council either in person or by correspondence their comments and recommendations made in regard to the proposed vacation.

(2). The public hearing shall be scheduled within 100 days from the date that the written petition is completed and deemed submitted. Notice of the hearing shall be provided as set out in Section 36-25A-3 of the Code of Alabama for notice of meetings and shall describe the street, alley, or public way, or portion thereof, requested to be vacated in the petition. A copy of the notice shall also be served by U.S. Mail at least 30 days prior to the scheduled hearing to any owner identified in section A.(2.) hereof and to any entity known to have facilities or equipment such as utility lines, both above-ground or buried, within the public right-of-way of the street or alley, or portion thereof, requested to be vacated in the petition.

(3). In addition to the aforesaid notice provisions, two signs shall be conspicuously posted at the location of the street, alley, or public way, or portion thereof, requested to be vacated in the petition. The signs shall be plainly visible to passers-by and posted no less than 15 days before the day of the scheduled public hearing and shall remain so

posted at all times until the hearing has been held. The signs shall be weatherproof and the petitioner shall be responsible for obtaining and posting such signs and providing photographic proof to the City Clerk that such signs were and remained posted as required herein. The wording on the signs shall not be less than two inches in height and shall be in substantially the following form:

### **NOTICE OF PUBLIC HEARING**

**APPLICATION HAS BEEN MADE TO THE CITY OF MOBILE TO VACATE  
THE STREET, ALLEY OR PUBLIC WAY ABUTTING THIS PROPERTY.  
FOR MORE INFORMATION CALL THE MOBILE CITY CLERK'S OFFICE  
AT 251-208-7414.**

(4). The person(s) who submitted the petition shall pay all costs of scheduling the public hearing and providing notice thereof, including the costs of advertisement, mailing, and posting the signs required by this section. The Clerk shall submit an invoice to the petitioner for such costs which must be paid prior to the scheduling of such hearing. Failure to pay such costs shall constitute a withdrawal of the petition unless the City Council grants a waiver of this requirement.

#### **(D). CRITERIA AND CONDITIONS OF VACATION.**

(1). The City Council may consider in regard to any proposed vacation the present and long term effects on existing utilities, proposed utilities, master traffic plan, traffic patterns, traffic counts, reasonable and convenient ingress and egress, public services, and any other factor deemed relevant by the City Council.

(2). Any vacation may be subject to reservation of easements and rights-of-way for utilities or conditioned upon easements or rights-of-way being granted or reserved to the City of Mobile, or other conditions, in the discretion of the City Council.

(3). Any entities with utility lines, equipment or facilities in place shall continue to have the rights set forth in Code of Alabama § 23-4-20(f), as same now exists or may hereafter be amended.

(4). No vacation of any street, alley, or dedicated public way shall deprive other property owners of any right they may have to convenient and reasonable means of ingress and egress to and from their property, and if that right is not afforded by the remaining streets, alleys, or dedicated public ways, then another street, alley, or dedicated public way affording such right must be dedicated as may be required by applicable State law.

(5). The City Council further reserves its rights to close or vacate any street, alley or public way by its own action pursuant to its inherent and statutory police and other powers.

(6). Partial vacations may be approved but are not favored. Partial vacations of any alley will not be allowed without the notarized written consent of all owners of property that abut the entire length of the alley.

**(E). PAYMENT OF FEES.**

(1). It shall be the policy of the City Council to require abutting landowners who will benefit directly from the vacation of a road, street, alley, or other dedicated public way, open or unopen, to pay to the City a fee in accordance with Section 11-49-6 of the Code of Alabama.

(2). The fee shall be equal to the fair market value of the land which will be added to the holdings of the abutting landowners who will directly benefit from the vacation, as determined in accordance with Section 11-49-6.

(3). If the aggregate fee for all lots or tracts of abutting landowners who will directly benefit from the vacation, as determined in accordance with Section 11-49-6, is less than \$5,000.00, then no fee shall be required.

(4). If the aggregate fee for all lots or tracts of abutting landowners who will directly benefit from the vacation, as determined in accordance with Section 11-49-6, is equal to or greater than \$5,000.00, then the fee shall be finally determined and assessed by the City Council after a public hearing, notice of which shall be published and mailed in accordance with the requirements of Section 11-49-6 of the Code of Alabama.

(5). The Council may, in its discretion, waive any fee as it determines to be justified or warranted under the circumstances presented.

**(F). COMPLETION OF PROCESS.**

Once all fee(s) and cost(s) have been paid, and any other conditions of the vacation have been met, and if the City Council has approved the petition for vacation, the person(s) who submitted the petition for vacation will receive a certified copy of the Council's resolution to be filed by them together with the declaration of vacation in the Office of the Judge of Probate of Mobile County.

**SECTION TWO. SEVERABILITY.**

The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

**SECTION THREE. EFFECTIVE DATE.**

This Ordinance shall become effective immediately upon its adoption and publication as required by law, provided, however, that this Ordinance shall not be applicable to any petitions for vacation duly filed with the City Clerk prior to the effective date hereof.

ADOPTED:

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City Clerk