

Section 8309 of the *Streets & Highway Code* defines VACATION as “The complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.”

Applicability

The process of vacation or abandonment of public service easements or rights-of-way is governed by State and municipal codes that require that certain information and findings be considered before public easements/rights-of-way can be vacated to private use.

The following are examples of public rights-of-way that require formal action by the legislative body (whether created by map or separate instrument dedication):

- **Easements** – public utility, public service, storm & sanitary sewer, landscape tree planting, sidewalk, slope, light and air.
- **Building Set-Back Lines** – established by Final or Parcel Map
- **Public Street Right-of-Way** – dedicated either by easement or fee interest

The following are examples of easements and rights-of-way not subject to the public vacation process:

- Easements granted to public utilities by separate instrument in which the public has no interest.
- Easements granted between individual property owners.
- Easement rights owned by other public agencies such as Santa Clara Valley Water District, school districts, or regional park districts.

Categories of Street Vacation Process

The street vacation process can be separated into two categories, REGULAR and SUMMARY. Each process is specified by the Government Code, State of California, Streets & Highways Code, Section 8300.

Specific statutory requirements are stated in this code which relate to the environmental clearance, public utility consent, review by other governmental agencies, public noticing, conduct of public hearings, and that the legislative body (City Council) make certain findings with regard to the easement or right-of-way.

REGULAR – The Regular process requires approximately 10 to 12 weeks between the acceptance of the vacation application and the final City Council hearing deciding the approval of the vacation. The street or easement may then be deemed vacated upon the recordation of the City Council resolution. If the City holds a fee interest in the property under the street or easement vacated, then it may take several months to negotiate the sale of the property.

SUMMARY – The Summary process can take as little as 6 weeks from the date of acceptance of the vacation application. Summary Vacations also require approval by the City Council.

Contact Staff for Questions

Call Development Services staff at the number listed above with any questions you may have.

Instructions

Schedule an Appointment with Staff

An appointment to submit your Vacation application can be scheduled by faxing a request to (408) 292-6054. Your request should include a copy of the completed **Application for Vacation of a Street or Easement** and a copy of the **County Assessor's Parcel Map** showing the street or easement proposed for abandonment. Staff will process your request within one (1) working day.

When submitting a Vacation application, include the following:

- 1) **Applicant's Information** – include the name, address, daytime phone number of the Applicant or his/her designated legal entity. If an agent is applying on behalf of the property owner, then information must be provided for both parties.
- 2) **Provide a Description of Adjacent Property** – Include a description of the property adjacent to the street or easement proposed for vacation.
- 3) **Specify Vacated Area** – public street, public utility, or other type of easement
- 4) **Explain the Request** – State why the easement / right-of-way should be vacated. What is the intended use for the vacated property?
- 5) **Sign the Application** – Print your name, sign and date the application. If an agent is applying on behalf of the property owner, then both parties must sign the application.
- 6) **Application Fee** – include a check for the vacation application fee. Please see the fee schedule titled "Public Works Permit Fees" for the current fee amount.
- 7) **Documents** – The following documents are to be submitted with the application:
 - A **Completed Application** for vacation.
 - **Letters of review and approval** from all Utility companies that may have some interest in the street or easement to be vacated. These letters must be signed by the utility company and indicate their approval of the vacation. (See the attached examples)
 - A copy of the **County Assessor's Parcel Map** showing the property to be vacated.
 - A copy of the **Tract or Parcel Map** by which the street or easement was created (if applicable).
 - A current **Title Report** addressing the underlying fee title of the public street to be vacated. If the easement proposed for vacation does not involve fee title interest (such as a wire clearance easement), no title report is required.
 - A **plat map and legal description** of the street or easement to be vacated. If this area is a public street or easement which affects fee interest, the plat and legal description must be prepared by a Licensed Land Surveyor or Registered Civil Engineer.

Upon submittal, City staff will review the application for completeness

- If the submittal is complete, staff will accept the application package and fee. The applicant will be advised of the time it will take to review the details of the application and schedule a City Council hearing (or other hearings required by law).
- If the submittal is incomplete (missing documents, etc) staff will return the application to the applicant for completion prior to any review taking place.

APPROVAL OF VACATION BY UTILITY COMPANIES

Prior to applying for a street or easement vacation, you must check with all of the utility companies that may have an interest in the street or easement proposed for vacation.

Below is a list of contacts for the different utility companies operating in San Jose. To expedite their review of your proposal, you should send each of them a copy of the plat map showing the area proposed for vacation, a letter requesting their review, as well as provide them with a pre-typed letter addressed to the City of San Jose that they can use for indicating their response to the proposed vacation. Examples of both letters are included.

Your application cannot be accepted until you have a positive response from each of the four affected utility companies.

Utility Company Contacts:

Shirley Victor, Right of Way Manager
AT&T of California
3475B North First Street, Room 600B
San Jose, CA 95134

David Neal
Pacific Gas and Electric Company
Land Rights Office - San Jose
111 Almaden Boulevard, Room 814
San Jose, CA 95115

Vladimir Plakhti, Construction Coordinator
COMCAST
1900 S. 10th Street
San Jose, CA 95112

Depending on the location of the street or easement proposed for vacation, you will need to contact one of the following water companies. Staff can assist you in determining the appropriate company.

James Bariteau
San Jose Water Company
1265 South Bascom Avenue
San Jose, CA 95128

Tim Town
San Jose Municipal Water System
3025 Tuers Road
San Jose, CA 95121

Robert Moore
Great Oaks Water Company
23 Great Oaks Boulevard
San Jose, CA 95119

SAMPLE LETTER TO UTILITY COMPANY

Bold indicates information specific to your request

Utility Company Name & Address

Date

SUBJECT: REQUEST FOR UTILITY APPROVAL OF THE VACATION OF:
Description of Street or Easement proposed for vacation.

Dear **Contact Name**:

As the property owner, developer or owner's agent of the property located at **property location** I/We are applying to the City of San Jose for the vacation of the **Description of Street or Easement proposed for vacation** adjacent to or across our property. One of the requirements of the City's application is the consent of your company to vacate, or vacate with the retention of an easement which meets your requirements.

Attached for your convenience are copies of the following: (check applicable boxes)

- Assessor's Parcel Map for APN **Assessor Parcel Number**
- Final Map of Tract Number **Tract Number**
- Plat of the property showing the easement / right-of-way to be vacated
- Property description and/or description of the easement
- Explanation of the proposed disposition of the easement or right-of-way, and an anticipated date by which I need the information.

If you have any questions regarding this request please contact me at **phone number**.

Name
Address

SAMPLE LETTER APPLICANT PREPARES FOR UTILITY COMPANY'S USE IN RESPONDING

Bold indicates information specific to your request

ENDORSEMENT APPROVAL

KATY ALLEN
Director of Public Works
City of San Jose
200 East Santa Clara Street
San Jose, California 95113

Dear Ms. Allen

Attention: Michael Liw

SUBJECT: VACATION OF: **Description of Street or Easement proposed for vacation.**

Utility Company Name has reviewed the attached application for the vacation of **Description of Street or Easement proposed for vacation** and has the following response:

- No objection to the vacation
- No objection to the vacation, but with the following reservation: _____

- Objects to the proposed vacation for the following reasons: _____

- A plat map is attached for you information.

Utility Contact Name
Utility Company Name
Utility Company Address