

Right-of-Way Vacation Policy and Procedures

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(1) Background.

The authority to vacate streets/rights-of-way is found in several sections of the Code of Alabama, 1975. Generally, the Code provides processes for a local governing body to vacate right-of way, for abutting landowners to vacate right-of-way, and for a circuit court to vacate right-of-way.

(a) Vacation of Right-of-Way by City Council.

- a. *Sections 11-49-100 through 11-49-106* provides that the city council may vacate a portion of a street (no more than half the width) provided it is used by a governmental entity to construct a public building. This type of street vacation requires the adoption of an ordinance by two-thirds vote of the city council. An ordinance being considered under these sections of the Code cannot be adopted until 30 days after its first introduction and after it is published in a newspaper for two consecutive weeks.
- b. *Sections 23-4-1 through 23-4-6* provides that the city council may vacate a street upon approval and recording of a resolution expressing that it is in the public interest to vacate the right-of-way. The city council is required to conduct a public hearing to consider vacating the right-of-way and must give public notice to abutting land owners and utilities. A citizen alleging to be affected by the proposed vacation may submit a written objection or may request an opportunity to be heard at the required public hearing. If the city council elects to vacate the right-of-way it must adopt a resolution which describes the street, gives the names of the owners of the abutting property, gives the names of the owners of property, if any, which will be cut off from access, and states that it is in the interest of the public that the street be vacated. The resolution must be filed in the probate court. The vacation may not deprive 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 and alleys, another street or alley affording that right must be dedicated. The filing of the resolution operates as a declaration of the city council's vacation and divests all public rights and liabilities. Title and all public rights, including the right to close the street is vested in the abutting landowners. Entities with utility lines, equipment, or facilities in place at the time of vacation, have the right to continue to maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred. Any party affected by the vacation may appeal within 30 days of the decision to the circuit court. From the judgment of the circuit court, an appeal may be taken within 42 days by either

party to the Court of Civil Appeals or the Supreme Court in accordance with the Alabama Rules of Appellate Procedure. Section 23-4-6 provides that the provisions of these sections are cumulative with existing statute relating to the closing, changing or vacating of streets and highways.

(b) Vacation of Right-of-Way by Abutting Property Owners.

- a. *Section 23-4-20* provides that the property owner or owners abutting a right-of-way may join in a written petition filed with the city council requesting that the street be vacated. Following receipt of the written request for assent, the city council acts on the request applying the same notice, hearing, voting, and appeal procedures as set forth in Sections 23-4-2 and 23-4-5 (described in b. above).
- b. *Sections 35-2-54 through 35-2-55* provides that a street or part of a street may be vacated by the owner or owners of the lands abutting the street joining in a written instrument declaring the street to be vacated. The written instrument must be executed, acknowledged and recorded in like manner as conveyances of land. The recording of the declaration operates to destroy the force and effect of the dedication by the map, plat or survey and divests all public rights in that part of the street vacated. The assent of the city council must be granted by resolution and a certified copy of the resolution must be recorded with the written declaration of vacation. Convenient means of ingress and egress to and from their property must be afforded to all other property owners, either by the remaining streets and or by any other street or alley being dedicated.

(c) Vacation of Right-of-Way by the Circuit Court.

Sections 35-2-58 through 35-2-62 authorize the circuit courts to vacate and annul any map, plat or survey of lands, or any streets, alleys, avenues or roads, upon the filing of a civil action by any person owning any of the property abutting the road, street or alley sought to be vacated. Appeals of the decision of the circuit court may be taken to the appellate court whom may affirm, reverse or render such judgment or order as the trial court should have rendered.

(d) Fees.

Section 11-49-6 provides that a city council may require abutting property owners who will benefit from a right-of-way vacation to pay a vacation of right-of-way fee equal to the fair market value of the land which will be added to the holdings of the abutting landowners. The fair market value of the property must be calculated by the city council according to specific criteria and a public hearing conducted.

(2) Policy.

- (a) Where a portion of the width of a right of way is proposed to be vacated, a minimum right-of-way width should be maintained as follows:
 - a. Cul-de-sac 50 feet
 - b. Local 50 feet
 - c. Collector 60 feet
 - d. Arterial 80 feet
- (b) Where a length of right-of way is proposed to be vacated, the vacation should extend the entire length of the block whenever possible.
- (c) The vacation may not deprive 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 and alleys, another street or alley affording that right must be dedicated.
- (d) Entities with utility lines, equipment, or facilities in place at the time of vacation, have the right to continue to maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred.
- (e) Drainage and utility easements will be retained where public infrastructure is located.
- (f) Title and all public rights, including the right to close the vacated street, alley, or highway vests in the abutting landowners.

(3) Procedure to vacate right-of-way with petition initiated by abutting owners.

The Public Works Department will administer and process all requests to vacate right-of-way. Requests to vacate right-of-way initiated by abutting property owners will be processed according to Section 23-4-20 and 35-2-54 of the Code of Alabama as follows:

- (a) The owner or owners of the land abutting the street to be vacated submit all completed application forms and pay all administrative fees/advertising costs as may be required along with the following written instruments:
 - a. written petition requesting that the City Council assent to the proposed street vacation;
 - b. written instrument declaring the street to be vacated; and,
 - c. quit-claim deed(s).

- (b) Following receipt of the application materials and written instruments, staff routes the request to city departments including public works, planning and water resource management and provides at least five working days for response.
- (c) The Public Works Department confirms a public hearing date with the applicant and the applicant initiates the required advertising/public notice.
 - a. Notice of the public hearing is published in a newspaper of general circulation once a week for four consecutive weeks.
 - b. A copy of the notice is posted on a bulletin board at the county courthouse.
 - c. A copy of the notice is served by U.S. mail at least 30 days prior to the scheduled meeting on all abutting property owners.
 - d. A copy of the notice is served by U.S. mail at least 30 days prior to the scheduled meeting on any entity known to have facilities or equipment such as utility lines, both aerial or buried, within the right-of-way to be vacated.
 - e. The notice describes the street, alley, highway, or portion thereof proposed to be vacated and gives the date, time, and location of the City Council meeting at which the proposed vacation is scheduled to be addressed.
 - f. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the City Council or may request an opportunity to be heard at the public hearing.
- (d) The Public Works Department prepares all necessary documents for City Council to properly consider the vacation request including an agenda information summary and resolution.
 - a. The agenda information summary will include appropriate written information to describe the proposed right-of-way vacation and include a location map and attachments including the right-of-way vacation petition, the right-of-way vacation declaration, resolution, and quit-claim deed(s).
 - b. The resolution must:
 - i. describe accurately the right-of-way, or portion thereof, to be vacated.
 - ii. give the names of the owner or owners of the abutting lots or parcels of land.
 - iii. give the names of the owner or owners of lots or parcels of land, if any, which will be cut off from access thereby over some other reasonable and convenient way.
 - iv. set forth that it is in the interest of the public to vacate the right-of-way.
- (e) If, following the public hearing, the City Council determines that vacating the right-of-way is in the public interest a resolution as described above must be approved by majority vote of the Council.
 - a. The approved resolution is filed, by the City Attorney, in the Probate Court along with the petition, declaration and quit-claim deed(s).

- b. Notice of the City Council action is published, by the Assistant City Clerk, once in a newspaper in the county no later than 14 days after its adoption.

(4) Procedure to vacate right-of-way initiated by city council.

The Public Works Department will administer and process requests to vacate right-of-way initiated by the city council in accordance with Section 23-4-2 of the Code of Alabama as follows:

- (a) Staff schedules a public hearing and initiates the required advertising/public notice.
 - a. Notice of the public hearing is published in a newspaper of general circulation once a week for four consecutive weeks.
 - b. A copy of the notice is posted on a bulletin board at the county courthouse.
 - c. A copy of the notice is served by U.S. mail at least 30 days prior to the scheduled meeting on all abutting property owners. Additional notification may be provided to other potentially affected parties.
 - d. A copy of the notice is served by U.S. mail at least 30 days prior to the scheduled meeting on any entity known to have facilities or equipment such as utility lines, both aerial or buried, within the right-of-way to be vacated.
 - e. The notice describes the street, alley, highway, or portion thereof proposed to be vacated and gives the date, time, and location of the City Council meeting at which the proposed vacation is scheduled to be addressed.
 - f. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the City Council or may request an opportunity to be heard at the public hearing.
- (b) The Public Works Department prepares all necessary documents for City Council to properly consider the vacation request including an agenda information summary, legal description, survey, resolution, and quit-claim deeds.
 - a. The agenda information summary will include appropriate written information to describe the proposed right-of-way vacation and include a location map and attachments including the resolution and necessary quit-claim deed(s).
 - b. The resolution must:
 - i. describe accurately the right-of-way, or portion thereof, to be vacated.
 - ii. give the names of the owner or owners of the abutting lots or parcels of land.
 - iii. give the names of the owner or owners of lots or parcels of land, if any, which will be cut off from access thereby over some other reasonable and convenient way.
 - iv. set forth that it is in the interest of the public to vacate the right-of-way.

- (c) If, following the public hearing, the City Council determines that vacating the right-of-way is in the public interest a resolution as described above must be approved by majority vote of the Council.
 - a. The approved resolution is filed, by the City Attorney, in the Probate Court along with any necessary quit-claim deed(s).
 - b. Notice of the City Council action is published, by the Assistant City Clerk, once in a newspaper in the county no later than 14 days after its adoption.

(5) Appeals.

- (a) Any party affected by the decision of the city council to vacate right-of-way may appeal within 30 days of the decision to the circuit court.
- (b) The proceeding is tried de novo, and either party has the right to demand trial by jury when and as demand is authorized in civil actions.
- (c) The appeal does not suspend the effect of the vacation unless the appealing party provides a surety bond in an amount to be determined by the circuit judge.
- (d) From the judgment of the circuit court, an appeal may be taken within 42 days by either party to the Court of Civil Appeals or the Supreme Court in accordance with the Alabama Rules of Appellate Procedure.

Sample Resolution Assenting to Right of Way Vacation Request

Sought by Adjacent Property Owners

WHEREAS, the City Council of the City of Auburn has received a petition to vacate certain right-of-way described in the attached Petition for Vacation of [insert road name] located in the Auburn city limits; and,

WHEREAS, the petition is filed in accordance with the provisions of Section 23-4-20 of the Code of Alabama 1975 which provides that any street or alley may be vacated, in whole or in part, by the owner or owners of the land abutting the street or alley or abutting that portion of the street or alley desired to be vacated; and,

WHEREAS, all owners of land abutting the portion of right-of-way proposed to be vacated have joined in the petition to vacate said right-of-way; and,

WHEREAS, the Petition for Vacation of [insert road name] states that no property owner will be deprived of any right they may have to convenient and reasonable means of ingress and egress to and from their property as a result of the requested vacation; and,

WHEREAS, a public hearing was conducted by the Auburn City Council on [insert date] at which time all persons were given an opportunity to be heard in favor of or in opposition to the proposed right-of-way vacation; and,

WHEREAS, public notice of the public hearing was provided in accordance with Section 23-4-2 of the Code of Alabama 1975; and,

WHEREAS, the City Council of the City of Auburn has determined that it is in the best interest of the City to vacate the right-of-way described in the attached Petition for Vacation of [insert road name] and that the right-of-way should be returned to the abutting landowners.

NOW THEREFORE, BE IT RESOLVED that the City of Auburn, Alabama, does hereby assent to the right-of-way vacation as described in the attached Petition for Vacation of [insert road name].

BE IT FURTHER RESOLVED that the City of Auburn, Alabama, does hereby remise, release, quitclaim to the aforesaid parties whatever right, title and interest the City of Auburn may have acquired in the property by virtue of the dedication or the vacation of said property, or otherwise, and that Bill Ham, Jr., Mayor of the City of Auburn, is authorized to execute and deliver a Quitclaim Deed to the forenamed parties or persons carrying out the intention of this paragraph and the City Clerk be and is hereby authorized and directed on behalf of the City of Auburn to attest the same.

BE IT FURTHER RESOLVED that the City Clerk shall cause a copy of this resolution to be filed in the Probate Court of Lee County and shall further cause a copy of this resolution to be published once in a newspaper in Lee County no later than 14 days after its adoption.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the [insert date].

Sample Resolution for City Council to Vacate Right of Way

WHEREAS, the City Council of the City of Auburn desires to vacate a portion of the [insert street name] right-of-way described below located in the Auburn city limits; and,

WHEREAS, Section 23-4-2 of the Code of Alabama 1975 provides the procedures by which the City Council may vacate right-of-way; and,

WHEREAS, property abutting the right-of-way to be vacated is owned by [insert names of abutting property owners]; and,

WHEREAS, no property owner will be deprived of any right they may have to convenient and reasonable means of ingress and egress to and from their property as a result of the requested vacation; and,

WHEREAS, a public hearing was conducted by the Auburn City Council [insert date] at which time all persons were given an opportunity to be heard in favor of or in opposition to the proposed right-of-way vacation; and,

WHEREAS, public notice of the public hearing was provided in accordance with Section 23-4-2 of the Code of Alabama 1975; and,

WHEREAS, the City Council of the City of Auburn has determined that it is in the best interest of the City to vacate the right-of-way described below and return said right-of-way to the abutting landowners.

NOW THEREFORE, BE IT RESOLVED that the City of Auburn, Alabama, does hereby vacate the right-of-way herein described pursuant to the provisions of Section 23-4-2 of the Code of Alabama 1975 and reserves a drainage and utility easement across the same said property:

[insert legal description of right of way to be vacated]

BE IT FURTHER RESOLVED that the City of Auburn, Alabama, does hereby remise, release, quitclaim to the aforesaid parties whatever right, title and interest the City of Auburn may have acquired in the property by virtue of the dedication or the vacation of said property, or otherwise, and that Bill Ham, Jr., Mayor of the City of Auburn, is authorized to execute and deliver a Quitclaim Deed to the abutting landowners and the City Clerk be and is hereby authorized and directed on behalf of the City of Auburn to attest the same.

BE IT FURTHER RESOLVED that the City Clerk shall cause a copy of this resolution to be filed in the Probate Court of Lee County and shall further cause a copy of this resolution to be published once in a newspaper in Lee County no later than 14 days after its adoption.

ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the [insert date].

Sample Letter to Adjacent Property Owner

Adjacent Owner
Auburn, AL 36832

Subject: Proposed Right-of-Way Vacation

In accordance with the provisions of Section 23-4-2 of the Code of Alabama you are hereby notified that the City Council of the City of Auburn will conduct a public hearing to consider a proposal to vacate a portion of the [insert road name] right-of-way. The public hearing will be conducted during the regularly scheduled City Council meeting on Tuesday, [insert date] beginning at 7:00 p.m. in the Auburn City Council Chambers, 141 North Ross Street, Auburn, Alabama 36830. Please be advised that, should you desire, you may submit a written objection to the Auburn City Council or you may request an opportunity to be heard at the public hearing.

The public hearing announcement with detailed description of the right-of-way proposed to be vacated is attached for your information.

Sincerely,

Riley Brice, Land Acquisition Specialist

Enclosure

Sample Letter to Utility Company

Utility
Auburn, AL 36832

Subject: Proposed Right-of-Way Vacation

In accordance with the provisions of Section 23-4-2 of the Code of Alabama you are hereby notified that the City Council of the City of Auburn will conduct a public hearing to consider a proposal to vacate a portion of the Indian Hill Road right-of-way. The public hearing will be conducted during the regularly scheduled City Council meeting on Tuesday, [insert date] beginning at 7:00 p.m. in the Auburn City Council Chambers, 141 North Ross Street, Auburn, Alabama 36830. Entities with utility lines, equipment, or facilities in place at the time of vacation, shall have the right to continue to maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred.

The public hearing announcement with detailed description of the right-of-way proposed to be vacated is attached for your information. Please contact me at 501-3011 should you have any concerns about this proposed vacation.

Sincerely,

Riley Brice, Land Acquisition Specialist

Enclosure: Public Notice Announcement

Utility Contact Information

Auburn Water Resource Management Department
1501 West Samford Avenue
Auburn, AL 36832

Alabama Power Company
1515 Pumphrey Avenue
Auburn, AL 36830

Alabama Gas Corporation
3400 Skyway Drive
Auburn, AL 36830

Charter Communications
1900 Mall Boulevard
Auburn, AL 36830

Bellsouth
1801 Airport Road
Opelika, AL 36801

City of Opelika Engineering
PO Box 390
Opelika, AL 36803

Opelika Water Works Board
502 Geneva Street
Opelika, AL 36801

Sample Public Notice

NOTICE OF PUBLIC HEARING AUBURN CITY COUNCIL [INSERT DATE] 7:00 P.M.

Notice is hereby given in accordance with Section 23-4-2 of the Code of Alabama that the City Council of the City of Auburn will conduct a public hearing during the regularly scheduled City Council meeting on Tuesday, [insert date] beginning at 7:00 p.m. in the Auburn City Council Chambers, 141 North Ross Street, Auburn, Alabama 36830 to receive the benefit of public input concerning a proposal to vacate a portion of the [insert road name] right-of-way. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the Auburn City Council or may request an opportunity to be heard at the public hearing.

The right-of-way proposed to be vacated is located at the end of Indian Hill Road and is more particularly described as follows:

[insert legal description of right of way to be vacated]

Sample Notice of Governing Body's Action

**NOTICE OF RIGHT-OF-WAY VACATION
BY THE
AUBURN CITY COUNCIL**

Notice is hereby given in accordance with Section 23-4-2 of the Code of Alabama that, following a public hearing conducted during the regularly scheduled City Council meeting on Tuesday, [insert date], the City Council of the City of Auburn approved Resolution No. [insert resolution number] vacating a portion of the [insert road name] right-of-way.

[insert resolution]

Excerpts from the Code of Alabama 1975

Excerpts from
Title 11 (Counties and Municipal Corporations)
Chapter 49 (Regulation, Construction, Maintenance, etc., of Streets,
Highways, Railroad Bridges, Ferries, etc.)
of the Code of Alabama 1975

Section 11-49-6

Vacation of right-of-way fee.

Prior to the exercise of the power of a municipality incorporated in this state to vacate the public right-of-way for a road, street, alley, or other dedicated public way, open or unopen, as a condition of exercise of such power to vacate, the governing body may require abutting landowners who will directly benefit from such vacation to pay to such municipality a vacation of right-of-way fee equal to the fair market value of the land which will be added to the holdings of such abutting landowners. Such fair market value shall be determined by the governing body of the municipality after a public hearing, notice of which shall be published in a daily newspaper of general circulation at least five days prior thereto and mailed to such address or addresses as may be set forth in the application by abutting owners for the vacation of right-of-way unless a waiver of such notice to abutting landowners is filed by such abutting landowners with the clerk of the municipality and noted in the minutes of the municipal governing body at the time of adoption of the resolution vacating such right-of-way, or unless the abutting landowners paying such fee appear, personally or by counsel, at such public hearing. In no event shall the said vacation of right-of-way fee exceed the assessed value per square foot of all subdivision lots or tracts abutting the right-of-way to be vacated applied to square foot area of the real property to be added to holdings of each abutting landowner paying such fee; provided, however, the determination of such a fee in a lesser amount by the governing body of the municipality shall be conclusive as to its amount.

(Acts 1982, 2nd Ex. Sess., No. 82-785, p. 288.)

Section 11-49-100

Adoption of ordinance for vacation of street and erection of public building, etc., thereon - Authorized generally.

Whenever in the judgment of the council or other governing body of any town or city it is to the interest of the public convenience that a portion of any street in the limits of such city or town be vacated and discontinued as a highway and that such vacated portion should be used for the

erection and maintenance in whole or in part thereon of any state, county or municipal public building or railroad station or depot or street railroad station or depot, such city or town council or other governing body may, by ordinance duly adopted, vacate such portions of such street and discontinue its use as a public highway and permit the erection and maintenance in whole or in part thereon of a state, county or municipal public building or railroad station or depot or street railroad station or depot.

(Acts 1909, No. 67, p. 102; Code 1923, §2238; Code 1940, T. 37, §663.)

Section 11-49-101

Adoption of ordinance for vacation of street and erection of public building, etc., thereon - Publication of notice as to introduction of ordinance and time for consideration thereof by council, etc. - Required.

No ordinance vacating a portion of a street as provided by Section 11-49-100 shall be adopted until after the expiration of 30 days after its first introduction, and after it has been introduced it shall be published in some newspaper published in the city or town for two successive weeks, and such publication shall also contain a statement of the time when it will be considered and that objections to its passage may then be heard by the council or other governing body; provided, however, that if the city or town has no newspaper published therein, such publication shall be made in some newspaper of general circulation published within the county where such city or town is located.

If, for any reason, the ordinance is not acted on at the time stated in the said notice, it may be postponed to the next regular meeting of the council or other governing body and may thereafter be postponed by the council or other governing body to subsequent regular meetings.

(Acts 1909, No. 67, p. 102; Code 1923, §2242; Code 1940, T. 37, §667; Acts 1949, No. 450, p. 655.)

Section 11-49-102

Adoption of ordinance for vacation of street and erection of public building, etc., thereon - Publication of notice as to introduction of ordinance and time for consideration thereof by council, etc. - Payment of costs thereof.

The state, county or municipality or the railroad or street railroad company or corporation for whose use as a site in whole or in part for a public building or a railroad station or depot or street railroad station or depot the vacation is proposed to be made shall pay the cost of such publication and notice.

(Acts 1909, No. 67, p. 102; Code 1923, §2243; Code 1940, T. 37, §668.)

Section 11-49-103

The City of Auburn is not permitted to provide legal advice and all questions concerning the procedures or processes outlined herein should be referred to an attorney. This information is being provided for the benefit of the citizens and is no way to be considered legal services or relied upon as legal advice or a legal opinion.

**Adoption of ordinance for vacation of street and erection of public building, etc., thereon
— Two-thirds vote of council, etc., required.**

Any ordinance for the vacation of a part of a street and erection of buildings thereon as is provided for in Section 11-49-100 shall be adopted only by a two-thirds vote of the council or other governing body.

(Acts 1909, No. 67, p. 102; Code 1923, §2240; Code 1940, T. 37, §665.)

Section 11-49-104

Portion of street to remain open to travel and traffic.

A sufficiently ample portion of the highway or thoroughfare which such street in whole or in part constitutes shall remain open to accommodate the travel and traffic of the owners of abutting property and of the general public, and not more than one half of the width of such highway or thoroughfare shall be vacated for the purposes mentioned in Section 11-49-100.

(Acts 1909, No. 67, p. 102; Code 1923, §2239; Code 1940, T. 37, §664.)

Section 11-49-105

Property rights in vacated portion of street.

The fee of such vacated portion of a street shall remain in the city or town, but the council or other governing body may grant the right to maintain thereon a state, county or municipal public building or a railroad station or depot or street railroad station or depot so long and only so long as the same shall be used for the purpose for which it was vacated.

(Acts 1909, No. 67, p. 102; Code 1923, §2241; Code 1940, T. 37, §666.)

Section 11-49-106

Liability for damages for vacation of street.

The party for whom the street may be vacated under this article shall be liable to the owners of property adjacent thereto in any civil action for any special damages suffered by them.

(Acts 1909, No. 67, p. 102; Code 1923, §2244; Code 1940, T. 37, §669.)

Title 23 (Highways, Roads, Bridges and Ferries)
Chapter 4 (Closing and Vacating Streets, Alleys and Highways)
of the Code of Alabama 1975

Section 23-4-1 Application.

Streets, alleys and other highways, or portions thereof, may be closed and vacated upon the application of the municipality in which they are situated and, where not situated in a municipality, upon the application of the county in which they are situated in the manner provided for in this article.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §26.)

Section 23-4-2 Procedure.

(a) Whenever the governing body of a municipality or county proposes to vacate a public street, alley, or highway, or portion thereof, the governing body shall schedule a public hearing prior to taking final action and shall publish notice of the proposed hearing on the vacation in a newspaper of general circulation in the portion of the county where the street, alley, or highway lies once a week for four consecutive weeks in the county prior to deciding the issue at a regularly scheduled meeting of the governing body. A copy of the notice shall be posted on a bulletin board at the county courthouse and shall also be served by U.S. mail at least 30 days prior to the scheduled meeting on any abutting owner and on any entity known to have facilities or equipment such as utility lines, both aerial or buried, within the public right-of-way of the street, alley, or highway to be vacated. The notice shall describe the street, alley, highway, or portion thereof proposed to be vacated and also give the date, time, and location of the meeting of the governing body at which the proposed vacation is scheduled to be addressed. Any citizen alleging to be affected by the proposed vacation may submit a written objection to the governing body or may request an opportunity to be heard at the public hearing held as required herein.

(b) If the governing body elects to vacate, it shall adopt a resolution which shall describe with accuracy the street, alley, or highway, or portion thereof, to be vacated and shall give the names of the owner or owners of the abutting lots or parcels of land and also the owner or owners of such other lots or parcels of land, if any, which will be cut off from access thereby over some other reasonable and convenient way. The resolution shall further set forth that it is in the interest of the public that such street, alley, or highway, or portion thereof, be vacated and shall be filed in the probate court of the county. In counties which elect the members of the county commission by single-member districts, the motion to approve the vacation shall be made by the commissioner in whose district the portion of the public street, alley, or highway to be vacated is

located. The vacation shall not 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 and alleys, another street or alley affording that right must be dedicated. The filing of the resolution as required herein shall operate as a declaration of the governing body's vacation and shall divest all public rights and liabilities, including any rights which may have been acquired by prescription, in that part of the public street, alley, or highway vacated. Title and all public rights, including the right to close the street, alley, or highway vacated, shall vest in the abutting landowners. Entities with utility lines, equipment, or facilities in place at the time of vacation, shall have the right to continue to maintain, extend, and enlarge their lines, equipment, and facilities to the same extent as if the vacation had not occurred. Notice of the governing body's action shall be published once in a newspaper in the county no later than 14 days after its adoption.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §27; Act 2004-323, p. 548, §1.)

Section 23-4-3 Contest by interested persons.

Repealed by Act 2004-323, p. 548, §2, effective July 1, 2004.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §28.)

Section 23-4-4 Recordation of report by commissioners; payment of costs and damages.

Repealed by Act 2004-323, p. 548, §2, effective July 1, 2004.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §29.)

Section 23-4-5 Appeals.

Any party affected by the vacation of a street, alley, or highway pursuant to this chapter may appeal within 30 days of the decision of the governing body vacating the street to the circuit court of the county in which the lands are situated, and upon such appeal, the proceeding shall be tried de novo, either party having the right to demand trial by jury when and as demand is authorized in civil actions. The appeal shall not suspend the effect of the decision of the governing body unless the appealing party shall give bond, with sureties, in an amount to be determined by the circuit judge. From the judgment of the circuit court, an appeal may be taken within 42 days by either party to the Court of Civil Appeals or the Supreme Court in accordance with the Alabama Rules of Appellate Procedure.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §30; Act 2004-323, p. 548, §1.)

Section 23-4-6 Article deemed cumulative.

The City of Auburn is not permitted to provide legal advice and all questions concerning the procedures or processes outlined herein should be referred to an attorney. This information is being provided for the benefit of the citizens and is no way to be considered legal services or relied upon as legal advice or a legal opinion.

The provisions of this article shall not be held to repeal any existing statute relating to the closing, changing or vacating of streets and highways, but shall be cumulative.

(Acts 1931, No. 49, p. 62; Code 1940, T. 56, §31.)

Section 23-4-20 Vacation of street or alley.

(a) Subject to the conditions set out in this subsection, any street or alley may be vacated, in whole or in part, by the owner or owners of the land abutting the street or alley or abutting that portion of the street or alley desired to be vacated by following the procedures set out herein. The owner or owners of the land abutting the street or alley to be vacated shall join in a written petition requesting that the street or alley be vacated and shall file the petition with the governing body with jurisdiction over the street or alley, or portion thereof, requesting the governing body's approval of the vacation. Following receipt of the written request for assent, the governing body shall act upon the request applying the same notice, hearing, voting, and appeal procedures as set forth in Sections 23-4-2 and 23-4-5, and if the governing body approves the vacation, it shall have the same effect as provided therein, including that the vacation shall not 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 and alleys, another street or alley affording that right must be dedicated.

(b) The provisions of this section shall not be held to repeal any existing statute relating to the vacation of roads, streets, or alleys, or parts thereof, and shall not be held to limit or expand any civil causes of action available under the law.

(Acts 1939, No. 69, p. 110; Code 1940, T. 56, §32; Act 2004-323, p. 548, §1.)

Excerpts from
Title 35 (Property)
Article 3 (Town Surveys, Plats or Maps, etc.)
of the Code of Alabama 1975

Section 35-2-53 Vacation of plat or map by owner of lands.

Any plat or map, whether or not executed and recorded as provided in this article, may be vacated by the owner, his executor, administrator or guardian of the lands at any time before the sale of any lot therein by a written instrument declaring the same to be vacated, executed, acknowledged and recorded in like manner as conveyances of land which declaration, being duly recorded, shall operate to destroy the force and effect of the recording of the plat or map so vacated and to divest all public rights in the streets, alleys and public grounds and all dedications laid out or described in such plat or map. When lots have been sold, the plat or map may be vacated, in the manner herein provided by all the owners of lots in such plat or map joining in the execution of such writing.

(Code 1896, §3902; Code 1907, §6031; Code 1923, §10360; Code 1940, T. 56, §16.)

Section 35-2-54 Vacation of streets or alleys by abutting landowners.

Any street or alley shown by any map, plat or survey, whether such map or plat is executed and recorded as provided by law or not, may be vacated, in whole or in part, by the owner or owners of the lands abutting the street or alley (or that portion of the street or alley desired to be vacated), or their executors, administrators or guardian, joining in a written instrument declaring the same to be vacated, such written instrument to be executed, acknowledged and recorded in like manner as conveyances of land, which declaration being duly recorded shall operate to destroy the force and effect of the dedication by the map, plat or survey and to divest all public rights, including any rights which may have been acquired by prescription, in that part of the street or alley so vacated. If any such street or alley is within the limits of any municipality, the assent of the mayor and aldermen or other governing body of the municipality must be procured, evidenced by a resolution adopted by such governing body, a copy of which, certified by the clerk or ministerial officer in charge of the records of the municipality must be attached to, filed and recorded with the written declaration of vacation. Convenient means of ingress and egress to and from their property shall be afforded to all other property owners owning property in the tract of land embraced in the map, plat or survey, either by the remaining streets and alleys dedicated by such map, plat or survey or by any other street or alley being dedicated. If such street or alley has been or is being used as a public road and outside of any municipality, the assent of the county commission of the county in which the property is situated must be procured, evidenced by resolution adopted by such county commission, a copy of which,

certified by the presiding officer thereof, must be attached thereto, filed and recorded with the declaration of vacation.

(Code 1896, §3903; Code 1907, §6032; Acts 1923, No. 15, p. 10; Code 1923, §10361; Acts 1927, No. 199, p. 194; Code 1940, T. 56, §17.)

Section 35-2-55 Validation, ratification and confirmation of vacation of streets, etc.

Every change in location, or vacation, or attempted vacation of any road, street, avenue or alley, or any part thereof, by the owner or owners of lands abutting thereon, or upon which such road, street, avenue or alley is located, when such vacation, or attempted vacation, or change of location was in a city or town and was assented to, acquiesced in or authorized by the governing body thereof (or if it was without a city or town when such vacation, or attempted vacation, or change of location when made was assented to, acquiesced in, or authorized by the county commission, or which has been or may be hereafter ratified or confirmed by the county commission) is and shall be validated, ratified and confirmed, and all rights of the public in any such road, street, avenue or alley, or the part thereof so vacated, or attempted to be vacated, including all rights acquired by prescription, are and shall be relinquished or abandoned.

(Acts 1923, No. 15, p. 10; Code 1923, §10362; Acts 1927, No. 199, p. 194; Code 1940, T. 56, §18.)

Section 35-2-57 Duty of probate judge upon recording vacated map or plat.

When a map or plat or part thereof is vacated, the judge of probate must, upon recording such vacation, write in plain letters across the record of the map or plat, or the part so vacated, the word "vacated" and shall also refer on the same to the volume and page in which the instrument of vacation is recorded.

(Code 1896, §3905; Code 1907, §6034; Code 1923, §10364; Code 1940, T. 56, §20.)

Section 35-2-58 Vacation and annulment of map or plat, etc., by circuit court - Jurisdiction; parties.

The circuit courts of this state shall have jurisdiction and power to vacate and annul any map, plat or survey of lands, or any streets, alleys, avenues or roads, whether designated by any such maps, plats or surveys or not, upon the filing of a civil action by any person or persons owning any of the lots, parcels or tracts of land abutting such roads, streets or alleys sought to be vacated or annulled. Unless the owners of all the lots or parcels of land so abutting upon the roads, streets or alleys sought to be vacated join as plaintiffs, the owners and claimants of such other lots or parcels of land abutting upon the roads, streets or alleys sought to be vacated shall be made parties defendant; and the municipality, town or city, if the land is located within any municipality, town or city, shall also be made a party defendant; and, if not located in such municipality, city or town, the county in which such lands are located shall be made a party defendant.

(Code 1923, §10365; Code 1940, T. 56, §21.)

Section 35-2-59 Vacation and annulment of map or plat, etc., by circuit court - Conduct of proceedings; entry of judgment; appeals.

The proceedings for vacating and annulling such maps, plats, surveys, roads, streets or alleys shall be conducted in all respects as civil actions are conducted and the circuit court may prescribe all rules and regulations for the conduct of such proceedings which are not inconsistent with the laws of this state or rules promulgated by the supreme court. Upon the final hearing of the action, the court may grant the relief prayed in the complaint in whole or in part, or may deny such relief in whole or in part. An appeal will lie from such judgment of the circuit court, as is authorized or provided from other judgments of the circuit court; and upon such hearing, the appellate court may affirm, reverse or render such judgment or order as the trial court should have rendered.

(Code 1923, §10366; Code 1940, T. 56, §22.)

Section 35-2-60 Vacation and annulment of map or plat, etc., by circuit court - Recordation of judgment.

If the final judgment or order of the court provides that any map, plat, survey, road, street or alley shall be vacated or annulled in whole or in part, the petition or complaint, together with the final order or judgment of the court, shall be recorded in the office or offices in which the map, plat or survey showing such roads, streets or alleys are recorded, and the order or judgment of the court shall not be final until such petition, complaint, order or judgment is so recorded.

(Code 1923, §10367; Code 1940, T. 56, §23.)

Section 35-2-62 Remedies not exclusive.

The remedies provided in this article for vacating maps, plats, surveys, streets, alleys, etc., shall not be held to be exclusive, but alternative or cumulative.

(Code 1923, §10369; Code 1940, T. 56, §25.)