

## Vacating a Street or Alley

1. **Petition.** A person seeking to vacate a street or an alley must file a petition with the township governing body that is signed by all of the owners of the property adjoining the portion of the street or the alley that the petition seeks to vacate. The petition also needs to set forth the facts and reasons for such vacation and be accompanied by a plat of the street or alley proposed to be vacated. The petition needs to be verified by the oath of at least one petitioner. NDCC 40-39-05
2. **Vacating Street or Alley Where Utilities are Located.** No street or alley may be vacated when any sewers, water mains, gas or other pipes, or telephone, electric, or cable television lines exist unless:
  - a. The sewers, mains, pipes, or lines have been abandoned and are not in use;
  - b. The owner of the utility consents to the vacation; or
  - c. Perpetual easements for the maintenance of the sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines has been given. Any vacation of areas within which are located electric facilities, whether underground or above ground, is subject to the continued right of location of such electric facilities in the vacated area. NDCC 40-39-04
3. **Governing Body Initial Review of Petition.** If the governing body finds that the petition is in proper form and contains the required signatures and that it is expedient to consider the petition, the governing body of the township shall order the petition to be filed with the township clerk. NDCC 40-39-06
4. **Expenses of Vacation Process.** All expenses incurred in vacating any street or alley shall be paid by the petitioners. The amount shall be deposited with the township treasurer before any expenses are incurred. The amount to be deposited is determined by the governing body. Any part of the deposit not used for expenses will be returned to the petitioner. NDCC 40-39-09
5. **Filing with the Township Clerk and Publication.** The township clerk will give notice by publication at least once each week for four weeks. The notice needs to state that the petition has been filed and the object of the petition and the date the petition will be considered by the governing body. The hearing date cannot be less than thirty days after the first publication of the notice. NDCC 40-39-06
6. **Hearing on Petition.** The governing body shall investigate the matter set forth in the petition and will take testimony and evidence of interested parties at the date set in the public notice. NDCC 40-39-07
7. **Governing Body Decision.** After hearing the evidence, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the street or alley described in the petition vacated upon such terms and conditions as it shall deem just and reasonable. NDCC 40-39-07
8. **Publication of Resolution.** Before the resolution is effective, it must be published once in the official newspaper. NDCC 40-39-07 and 40-11-06
9. **Filing and Recording Resolution with County Recorder.** A transcript of the resolution, certified by the township clerk, shall be filed and recorded in the county recorder's office. The resolution has the effect of conveying to the abutting property owners all of the right, title, and interest of the township to the property vacated. NDCC 40-39-08

Thanks to:

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ND League of Cities - Deputy Director/Staff Attorney

**40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located - Conditions.** No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way therefor, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents thereto, or unless perpetual easements for the maintenance of the sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

**40-39-05. Petition for vacation of streets, alleys, or public grounds - Contents - Verification.** No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.

**40-39-06. Petition filed with city auditor - Notice published - Contents of notice.** If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall be not less than thirty days after the first publication of the notice.

**40-39-07. Hearing on petition - Passage of resolution declaring vacation by governing body.** The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highways described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

**40-39-08. Resolution to be published, filed, and recorded - Effect.** Before the resolution declaring the vacation of a public ground, street, or alley shall go into effect, it shall be published as in the case of ordinances. A transcript of the resolution, duly certified by the city auditor, shall be filed for record and duly recorded in the office of the recorder of the county in which the municipality is situated, and such resolution thereafter shall have the effect of conveying to the abutting property owners all of the right, title, and interest of the municipality to the property vacated.

**40-39-09. Expenses for vacating streets, alleys, and public ways - Deposit required.** All expenses incurred in vacating any public grounds, street, or alley shall be paid by the petitioners, who shall deposit with the city auditor such sum as may be necessary before any such expense is incurred. The amount to be deposited shall be determined by the governing body, and any part thereof not used for such expenses shall be returned.

**40-39-10. Aggrieved person may appeal to district court.** Any person aggrieved by the decision of the governing body granting the vacation of any public grounds, street, or alley, within fifteen days after the publication of the resolution, may appeal to the district court of the county in accordance with the procedure provided in section 28-34-01. The judgment of the court therein is final.