

COUNCIL PENDING ORDINANCE CPO 2023-15  
ORDINANCE NO. \_\_\_\_\_  
AS AMENDED \_\_\_\_\_  
CERTIFICATION DATE \_\_\_\_\_  
FAVORABLY \_\_\_\_\_  
UNFAVORABLY \_\_\_\_\_

**VACATING PUBLIC WAYS**

**WHEREAS**, in IC 36-7-3-12 the state of Indiana set out the parameters for municipal ordinances on vacating public ways; and,

**WHEREAS**, the city of Gary's current version of its vacating the public ways ordinance needs updating to comply with current law; and,

**WHEREAS** for sake of clarity, it is best to not just revise the old version of the ordinance, but to repeal it all together and enact a new version; and,

**WHEREAS** it is in the best interest of the city to adopt a new version of the vacating public ways ordinance;

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Gary, Indiana as follows:

**SECTION 1.** That Ordinance No. 5793 passed on January 5, 1982, and found in Gary Municipal Code (GMC) Article V-Vacating Public Ways is to be repealed and updated as follows:

**ARTICLE V- VACATING PUBLIC WAYS**

**Sec. 36-157.** Petition for vacation.

- (a) Persons who own or are interested in any lots or parts of lots within the City, and want to vacate all or part of a public way or public place in or contiguous to those lots or parts of lots within the City, may file a petition for vacation with the Common Council of the City.
- (b) Persons desiring such vacation must file with the Common Council no later than seven days prior to the first reading on the vacation ordinance a sworn petition containing the following:
  - 1. The name and address of the applicant, including the following:
    - a. If an individual, whether the individual is acting for only himself or in a representative capacity for any other person.
    - b. If a partnership, the names of all the partners.
    - c. If a corporation, the names of the officers and directors, the principal place of business, and the state in which incorporated.

- d. If any other legal entity, the names and addresses of the legal holders of title.
  2. The circumstances of the case.
  3. A legal description of the property proposed to be vacated, to include the common known address, signed and certified by a land survey or registered by the state of Indiana.
  4. The correct names, addresses, and zip codes of each owner of land that abuts the property proposed to be vacated.
  5. A location map and site plan showing existing conditions and public way or public place marked "to be vacated" on the map.
  6. A statement as to whether Gary Sanitation District, or any other public utility desire to retain an easement within the area to be vacated, and if so, a legal description of said easement.
  7. An attachment to the petition from the Traffic Engineer and the Fire Department of the City of Gary concerning the effect of such vacation on traffic flow, accessibility of emergency equipment, and any other matter concerning public safety.
- (c) At the time of the filing of the petition, the person desiring such vacation shall file a completed vacation ordinance, the form of which is set forth in GMC 36-159 with a location map and site plan attached.
- (d) At the time of the filing of the petition, the person desiring such vacation shall provide the City Clerk with two certified checks or money orders in sufficient amounts to pay for the costs of publication in the City newspapers and for the costs of recording. The checks/money orders shall be made out in the proper amounts to cover the publication and the recording in the Lake County Recorder's office. Further, at the time of the filing of the petition, the person desiring the vacation shall provide the City Clerk with a filing fee of \$20.00 payable by certified check to the City Clerk.
- (e) All petitions and ordinances shall be filed along with 13 copies on eight and one-half by 11-inch paper with the petition as the first document and the ordinance as the second document.
- (f) At the time the petition and ordinance are filed, the applicant shall also supply the City Clerk with notices to landowners whose land abuts the property to be vacated, the form of the notice being set forth in GMC 36-158 with pre-addressed envelopes and pre-addressed return receipts for certified mail returnable to the City Clerk with proper postage affixed.
- (g) Petition to vacate filing guide and instructions are to be obtained from the City's Department of Zoning Plan Commission.

Sec. 36-158 Notice.

- (a) The City Clerk shall give notice of the petition and of the time and place of the hearing, the form of which is set forth below, by publication one time in a newspaper of the general circulation in the City at least 10 days before the public hearing.

- (b) In addition, the City Clerk shall give notice of the petition and of the time and place of the hearing by certified mail to landowners whose land abuts the property proposed to be vacated, the notice must be mailed at least 10 days prior to the date of the public hearing.
- (c) The notice by publication shall be substantially as follows:

NOTICE OF A PUBLIC HEARING REGARDING THE VACTION OF

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The purpose of this hearing is for the consideration of the vacation of the following public way or public place:

(Herein describe the property legally and commonly)

The public hearing on the proposed action will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ am/pm in the Gary Common Council, 401 Broadway, 2<sup>nd</sup> Floor, Gary, Indiana.

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City Clerk

- (d) The notice by certified mail shall be substantially as follows:

To Whom It May Concern:

Persons owning or having an interest in any lots or parts of lots contiguous to a public way or public place commonly referred to as \_\_\_\_\_

have petitioned the Common Council of the City of Gary to vacate the aforesaid public way or public place. It is required by law that a public hearing be held regarding this vacation, at which time any person aggrieved by the proposed vacation may object on the basis of certain grounds which are set forth in the Indiana Code 36-7-3-13. The public hearing on this proposed action will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_ am/pm, in the Gary Common Council, 401 Broadway, 2<sup>nd</sup> Floor, Gary, Indiana.

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City Clerk

Sec. 36-159. Public Hearing.

- (a) The Common Council of the City shall hold a public hearing on the petition within 30 days of the receipt of the petition. The public hearing is subject to the State Open Door Law (see IC 5-14-1.5-1 et seq.). At the public hearing, any person aggrieved by a proposed vacation may object to that vacation on one of the below grounds:
  - a. The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.
  - b. The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.
  - c. The vacation would hinder the public's access to church, school, or other building or place.
  - d. The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.
- (b) At the time of the public hearing, the City Clerk shall provide proof of publication from the circulation and the return receipts from the certified mail notice which was sent to abutting landowners. The person desiring the vacation shall explain any unreturned receipts.
- (c) After the public hearing and vote, the Common Council may by ordinance vacate the public way or place.
- (d) The ordinance of vacation shall, omitting formal parts, be substantially as follows:

AN ORDINANCE TO VACATE CERTAIN PUBLIC WAYS OR PUBLIC PLACES WITHIN  
THE CITY OF GARY, INDIANA COMMONLY KNOWN AS

\_\_\_\_\_,  
PETITIONER \_\_\_\_\_

BE IT ORDAINED by the Common Council of the City of Gary, Indiana, as follows, to-wit:

Section 1. That pursuant to Gary Municipal Code Sec. 36-157, a sworn petition was presented to the Common Council of the City of Gary, requesting that the public place or public way described in Section 3 below be vacated by the City of Gary.

Section 2. That after due and proper notice a timely public hearing was convened by the Common Council, at which time all interested persons were permitted to address the Common Council regarding said vacation.

Section 3. That the Common Council of the City of Gary, after due investigation and consideration has determined that the nature and extent of the public use and the public interest

to be subserved is such as to warrant the vacation of that part of the public way or public place described as follows, and further indicated by the words "To Be Vacated" on the drawing hereto attached, which is made part of this Ordinance.

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(here insert legal and common description)

Section 4. That the vacation of said public way or public place described in Section 3 above, is subject to an easement in favor of (insert any public utilities that are requesting an easement), said easement is more particularly described as follows: (Note: Omit in total or in part if inapplicable)

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(Here Insert Easement Description)

Therefore, The Common Council of the City of Gary, Indiana, does hereby find the above-described public way or public place is no longer required for public use and the public interest will be served by such vacation, and the Common Council of the City of Gary does hereby vacate that portion of the public way or public place described in Section 3 above subject to the terms and conditions as stated in this Ordinance.

(e) Upon passage of the ordinance vacation, the City Clerk shall furnish a copy of the ordinance to the County Recorder for recording, and to the County Auditor.

Sec. 36-160. Subsequent proceeding limited.

After the termination of a vacation proceeding under this article, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two years.

Sec.36-161. Public utilities.

Notwithstanding this article, vacation proceedings in a municipality do not deprive a public utility of the use of all or part of a public way or public ground to be vacated if at the time of the proceedings are instituted, the utility is occupying and using all or part of that public way or public ground for the location and operation of its facilities. However, the utility may waive its rights under this section by filing its written consent in the vacation proceedings.

Sec. 36-161. Right of appeal.

Within 30 days after the adoption of a vacation ordinance, any aggrieved person may appeal the ordinance to the Lake County Circuit Court. That court shall try the matter de novo and may award damages.

Sec. 36-162. Vacation of platted easements.

Platted easements may be vacated in the same manner as public ways and public places in accordance with this chapter and State law. When the vacation proceedings involve only platted easements, all references shall be to platted easements instead of public ways or public places.

**SECTION 2.** That the amendment be placed in the Municipal Code online and print editions of the code without the mark-ups.

**SECTION 3.** This ordinance shall be in full force and effect from and after its passage.

**PASSED** by the Common Council of the City of Gary, Indiana, this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
PRESIDING OFFICER

ATTEST:

\_\_\_\_\_  
CITY CLERK

Presented by me to the Mayor for his approval and signature this \_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
CITY CLERK

**APPROVED** and **SIGNED** by me this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
MAYOR, CITY OF GARY, INDIANA

PREPARED BY: Angela Lockett, Corporation Counsel

SPONSORED BY: Mayor Jerome Prince

COMMITTEE ASSIGNMENT \_\_\_\_\_ Reported-out/Date \_\_\_\_\_  
1<sup>st</sup> Reading/Date \_\_\_\_\_ Committee Hearing/Date \_\_\_\_\_  
2<sup>nd</sup> Reading/Date \_\_\_\_\_ Public Hearing/Date \_\_\_\_\_  
3<sup>rd</sup> Reading/Date \_\_\_\_\_ Final Reading/Date \_\_\_\_\_  
Passed/Date \_\_\_\_\_ Defeated/Date \_\_\_\_\_ Deferred/Date \_\_\_\_\_  
Tabled/Date \_\_\_\_\_ Override/Date \_\_\_\_\_ Adopted Date \_\_\_\_\_  
Publications/Date \_\_\_\_\_ Community Hearing/Date \_\_\_\_\_ Veto \_\_\_\_\_ Pocket  
Veto \_\_\_\_\_ Adopted \_\_\_\_\_