

**PROCEDURES FOR VACATIONS BY
ABUTTING PROPERTY OWNERS UNDER
ACT 2004-323,
EFFECTIVE JULY 1, 2004**

The following memorandum has not been updated to reflect amendments enacted during the 2014 session of the Alabama Legislature. It is provided as a convenience. Those wishing to vacate public ways should consult their attorney to determine how best to proceed.

1. **Petition** to the County Commission requesting assent to vacation.

2. **Notice:** All three (3) are required

Publication: In newspaper of general circulation in the area of the County where the street, alley or highway lies

Posting: Bulletin board at County Courthouse

U. S. Mail: To abutting property owners and utilities known to have facilities or equipment (buried or aerial) within the right-of-way

When: Publication: Once a week for four (4) consecutive weeks

Posting: At least thirty (30) days prior to consideration of petition

U. S. Mail: Must be received at least thirty (30) days prior to consideration of petition

Content: Describe street, alley, highway or portion thereof to be vacated
Provide date, time, and location of the Commission meeting at which petition will be considered
Advise that any citizen alleging to be affected by the proposed vacation may submit a written objection to the County or may request to be heard at the public hearing.
Advise that any entity 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 as if the vacation had not occurred.

3. **Resolution** See Item #4

Minutes of the meeting at which petition is considered must reflect motion to vacate made by Commissioner in whose district the property is located.

4. **Notice of Approval of Vacation**

Published in newspaper no later than fourteen (14) days after adoption of resolution assenting to vacation

5. **Recording the Resolution**

The resolution must be recorded in the office of the Probate Judge of Mobile County

**PROCEDURES FOR VACATING
PUBLIC STREETS, HIGHWAYS, ALLEYS, OR PORTION THEREOF**

This memo summarizes the procedure to be used by landowners seeking to vacate public streets, highways, alleys, or portions thereof. Vacation is a statutory procedure and strict adherence to the statute is required. Applicable statutes are §§23-4-2, 23-4-5 and 23-4-20, Code of Alabama (1975), as amended.

1. MEET WITH ENGINEERING

Landowners seeking to vacate should first contact the Engineering Department at 574-8595. They should provide all pertinent subdivision plats, deeds, surveys and legal descriptions depicting the adjoining property, and the public street, highway, alley or portion thereof being vacated. Landowners must obtain letters from all utilities in the area indicating that there is no utility equipment in place and that the utility company has no need locate equipment at the location in the future. The Engineering Department will determine if the County at any time paid for the street, right-of-way or portion thereof that the landowner seeks to vacate. If the Engineering Department sees no public need in retaining the street or right-of-way, and the utilities express no need, the landowner will be given a verbal indication that the Engineering Department will not object to the vacation.

In order to proceed, landowners need to provide the Engineering Department a legal description of the property to be vacated and a list of all adjoining property owners. After review, Engineering will complete the Transmittal Form for Vacation Request (see Item #7) to the County Administrator, who will open a Vacation Request file.

2. LANDOWNERS SUBMIT APPROVALS, PETITION TO COUNTY ADMINISTRATOR

A. APPROVAL OF THE MUNICIPAL PLANNING COMMISSION

If the property lies within the jurisdiction of any municipal planning commission, written comment of that commission is required so that the County can better evaluate whether the proposed vacation is in the public interest. Landowners should seek and obtain a written comment from such commission using the form letter request which is attached as Item 2. When completed by the planning commission, the form should be submitted to the County Administrator, who will place it in the Vacation Request file.

B. SUBMIT A PETITION & RESOLUTION

At this point, the landowners need to retain an attorney to draft a petition and resolution consistent with §23-4-20, Code of Alabama (1975). As a convenience, attached as Item 3 is a sample petition which is consistent with state law and which may be used for drafting purposes. Item 4 is a sample resolution.

The petition must be signed by all adjoining landowners. Although the notary acknowledgments for the signatures of the petitioners must necessarily be dated, do not date the document itself as this will be done by the County Commission at the time of adoption of the resolution

The resolution must be submitted in paper and in editable, electronic format.

2. COUNTY LEGAL DEPARTMENT

At this point, the Landowners will have submitted to the County Administrator the executed petition and the proposed resolution, along with all necessary letters from utilities and the municipal planning commission (if applicable). The County Administrator will forward the transmittal form from the Engineering Department, the petition for vacation and the resolution to the County Legal Department, to determine compliance with §23-4-20. If so, the County Legal Department will indicate its approval on an appropriate transmittal form, an example of which is attached as Item #8 and return it, with the vacation documents, to the County Administrator's Office.

4. FILING FEE, PUBLICATION AND NOTICE

The County Administrator will determine the fees for processing the petition, which will include a filing fee of \$50.00; publication costs for the notice of hearing and notice of resolution; recording fees for recordation of the resolution in the Office of the Probate Judge; and certified mail costs. These costs will vary depending upon the length of the legal description, and the number of adjoining property owners and affected utilities. In addition, Petitioners are required to repay any amount previously paid by the County for the property the Landowners seeks to vacate.

When payment has been made, the County Administrator will select a date for the County Commission to hold a public hearing on the petition. The hearing may take place during a regular County Commission meeting and will be scheduled at least 45 days after the petition is filed, and at least 30 days after notice thereof has been distributed. Notice will be prepared by the County Administrator in the form shown on Items #5 and #6.

The County Administrator will distribute the notices in three (3) ways: By posting the notice shown as Item #5 on the bulletin board at the County Courthouse, at least thirty (30) days prior to the hearing date; by publishing the notice shown as Item #5 in a newspaper of general circulation in the area of the County in which the street, alley or highway lies, once a week for four consecutive weeks prior to the hearing; and by mailing the notice shown as Item #6, by both regular and certified mail, return receipt requested, to the adjoining property owners and utilities, which must be received by the addresses at least thirty (30) days prior to the hearing. The County Administrator will place a copy of the notices, an affidavit of publication, and certified mail return receipts in the Vacation Request File and complete the notice checklist (Item #10).

5. PUBLIC HEARING - RESOLUTION - RECORDING

A. PUBLIC HEARING AND ADOPTION OF RESOLUTION

The County Administrator will place the public hearing on the County Commission agenda for the date shown in the notice, to be followed by consideration of the petition itself. Prior to or at the hearing, the County Administrator will provide a copy of any written comments on the proposed vacation to the Commissioners. At the conclusion of the hearing, the Commissioner in whose district the property is located (if he or she wishes to proceed with the vacation) must make the motion to vacate, which must be reflected in the minutes.

B. NOTICE OF APPROVAL IN NEWSPAPER

If the petition to vacate is approved, the County Administrator will publish notice thereof (Item #9) in the newspaper no later than fourteen (14) days following adoption of the resolution.

C. RECORDING VACATION DOCUMENTS IN PROBATE COURT

The County Administrator will record the resolution in the records of the Judge of Probate and will provide copies thereof, after recordation, to the landowner's attorney and the County Engineering Department.

ITEM 2

LETTER TO MUNICIPAL PLANNING COMMISSION

FROM: ABUTTING PROPERTY OWNERS

REGARDING: VACATION OF PUBLIC STREET, HIGHWAY, ALLEY OR PORTION THEREOF

**BY: _____
ABUTTING PROPERTY OWNERS**

The undersigned abutting property owner(s) seek(s) to vacate the public street, highway, alley or portion thereof, described as:

(LEGAL DESCRIPTION)

(I)/(We) hereby request the written comments of the Planning Commission on this Request for Vacation.

Please either check the appropriate line and complete your response, or, state your response in a letter addressed to the Abutting Property Owner(s) listed below:

_____ The Planning Commission of the City of _____ consents to the vacation set forth above.

_____ The Planning Commission of the City of _____ objects to the vacation set forth above because:

Written comments, if any, by the City of _____ Planning Commission:

Please return this letter to:

(Abutting Property Owner)
Address:

(Abutting Property Owner)
Address:

ITEM 3

STATE OF ALABAMA
COUNTY OF MOBILE

PETITION TO THE COUNTY COMMISSION
OF MOBILE COUNTY, ALABAMA
REQUESTING ITS ASSENT TO THE VACATION AND THE CLOSING OF
(SHOW NAME OF STREET/ROAD, ETC.)
IN MOBILE COUNTY, ALABAMA

Come now (PETITIONER) and (PETITIONER), and respectfully petition the Mobile County Commission to assent to the vacation and closing by such Petitioners as abutting property owners of the following described public street, highway, alley or portion thereof situated in Mobile County, Alabama and being more particularly described as follows:

(PROPERTY DESCRIPTION)

Petitioners pray that the Commission adopt a resolution assenting to the same in accordance with the provisions of §23-4-20, Code of Alabama, 1975, as amended.

Petitioners herein say and show that the property herein described is a (PUBLIC STREET, HIGHWAY, ALLEY OR PORTION THEREOF) located in the County of Mobile, State of Alabama, outside of any municipalities; that your Petitioners comprise all of the abutting landowners; that the vacation of such (PUBLIC STREET, HIGHWAY, ALLEY OR PORTION THEREOF) will not deny other property owners of such right as they may have to convenient and reasonable means of ingress and egress to and from their property, that if such right is not afforded by the remaining streets and alleys, the County Commission shall dedicate another street or alley affording that right, and that it would be to the best interests of the Mobile County Commission to vacate the same.

(PETITIONER)

(PETITIONER)

**STATE OF ALABAMA
COUNTY OF MOBILE**

I, _____, the undersigned Notary Public in and for the State of Alabama at Large, hereby that (PROPERTY OWNER) and (PROPERTY OWNER) whose names are signed to the foregoing Declaration of Vacation, and who are known to me, acknowledged before me on this day, that, being informed of the contents of said petition, they executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal on this the _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

ITEM 4

RESOLUTION

WHEREAS, (PETITIONER) and (PETITIONER), as abutting property owners of the following described right of way, on (Show name of street/road, etc.) have petitioned the Mobile County Commission to assent to the vacation and closing by them as abutting property owners of the right of way hereinafter described; and

WHEREAS, it has been shown to the satisfaction of the Mobile County Commission that the said (PETITIONER), (PETITIONER), (And - NAME ALL ABUTTING PROPERTY OWNERS AFFECTED BY THE VACATION) own all of the property abutting said right of way, that the same is not needed as a public road in Mobile County, Alabama, that (PROPERTY OWNER OR OWNERS / OR NO PROPERTY OWNER OR OWNERS) own lots or parcels that will be cut off from access thereby over some other reasonable and convenient way, and that it would be to the best interests of the Mobile County Commission to vacate the same; and

WHEREAS, Commissioner _____, in whose district the subject property is located, has moved for approval of said Petition for Vacation;

NOW, THEREFORE, BE IT RESOLVED, by the Mobile County Commission that its assent be, and the same is hereby given to (PETITIONER) and (PETITIONER) as abutting property owners, to the vacation and closing by them of the following described right of way, more particularly described as follows:

(PROPERTY DESCRIPTION)

BE IT FURTHER RESOLVED, that the assent of the County Commission be, and the same is hereby given to vacate and annul any portion of any map recorded in the Office of the Judge of Probate of Mobile County, Alabama, which shows the hereinbefore described right of way in accordance with the laws of the State of Alabama. The filing of this Resolution in said Office shall divest all public rights and liabilities, including any rights which may have been acquired by prescription, in that part of the 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, pursuant to Code of Alabama (1975), Sections 23-4-20 and 23-4-2, provided that 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 County Commission hereby finds that it is in the interest of the public that this street, alley, highway or portion thereof be vacated.

DONE this ____ day of _____, 20____, at Mobile County, Alabama.

MOBILE COUNTY COMMISSION

By: _____
Its: PRESIDENT

ATTEST:

JOHN F. PAFENBACH, County Administrator

STATE OF ALABAMA

COUNTY OF MOBILE

I, John F. Pafenbach, Administrator of Mobile County, Alabama, hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Mobile County Commission in its meeting held on the _____ day of _____, 20____.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of the Mobile County Commission on this _____ day of _____, 20____.

JOHN F. PAFENBACH
Mobile County Administrator

ITEM 5

NOTICE

(Pre-Hearing)

(Post at Courthouse and Publish in Newspaper)

TAKE NOTE that the Mobile County Commission has received a Petition Requesting Its Assent to the Vacation and Closing of (show name of street, alley, highway, or portion thereof) in Mobile County, Alabama.

The Petitioners (Names of Petitioners), as the owners of the abutting property seek to vacate and close the right-of-way described as follows:

(Legal Description)

The Mobile County Commission will conduct a public hearing on said Petition during its meeting on (date - at least 45 days after filing of the Petition) _____ at (time) _____, to be held in the Auditorium, Mobile Government Plaza, 205 Government Street, Mobile, Alabama. Any citizen alleging to be affected by the proposed vacation may submit a written objection or comment to the Mobile County Administrator, 205 Government Street, Mobile, Alabama 36644-1800, or may request to be heard at the public hearing.

ITEM 6

NOTICE

(Pre-Hearing)
(Mailed to Adjoining Owners and Affected Utilities)

TAKE NOTE that the Mobile County Commission has received a Petition Requesting Its Assent to the Vacation and Closing of (show name of street, alley, highway, or portion thereof) in Mobile County, Alabama.

The Petitioners (Names of Petitioners), as the owners of the abutting property seek to vacate and close the right-of-way described as follows:

(Legal Description)

The Mobile County Commission will conduct a public hearing on the said Petition during its meeting on (date – at least 45 days after filing of the Petition) _____ at (time) _____, to be held in the Auditorium, Mobile Government Plaza, 205 Government Street, Mobile, Alabama. Any citizen alleging to be affected by the proposed vacation may submit a written objection or comment to the Mobile County Administrator, 205 Government Street, Mobile, Alabama 36644-1800, or may request to be heard at the public hearing.

Any entity with utility lines, equipment or facilities in place at the time of vacation shall have the right to maintain, extend and enlarge their lines, equipment and facilities as if the vacation had not occurred.

ITEM 7

TRANSMITTAL FORM FOR VACATION REQUEST

The Engineering Department has reviewed the request for vacation of the following:

(Describe street, alley or highway)

The description of the street, alley or highway or _____ being vacated is correct:

YES: _____ NO: _____

The landowners have completely and correctly identified the adjoining property owners as identified by current tax records:

YES: _____ NO: _____

The property is within a municipality and written approval of the applicable municipal planning commission is required:

YES: _____ NO: _____

The petitioning landowners have submitted letters or appropriate documents from all applicable utilities that they have no objection to the proposed vacation:

YES: _____ NO: _____

The County previously paid \$_____ for the street, alley or highway, which sum should be recouped from the landowner as a cost of vacation:

YES: _____ NO: _____

In our opinion and based on our review, Mobile County has no present need and will have no future need for the right-of-way sought to be vacated. The Engineering Department has no objection to approval of the petition to vacate the property described above. Accordingly, this request is being transmitted to the Legal Department for its review.

Date: _____

County Engineer: _____

ITEM 8

Date

John Pafenbach, County Administrator

RE: Petition for Vacation

Dear John:

This office has reviewed a petition for vacation filed by Name and Name which pertain to an unopened service road and a 7.5' drainage and utility easement on Old Shell Road. Our review consisted solely of determining whether the documents submitted by the petitioners comply with the provisions of Section 23-4-20, Code of Alabama (1975). Based on our review, it is our opinion that the documents as drafted are in substantial compliance with the statute.

This file is now transmitted to your office in order that notice of the petition may be provided and the matter be placed on an agenda for Commission action. You will find the following attached:

Petition
Resolution
Utility company consents
Notices
Transmittal from Engineering

We are also forwarding the resolution and notice in electronic format.

Very truly yours,

Staff Attorney

Attachments as noted

cc: Jay M. Ross, Esq., County Attorney

ITEM 9

NOTICE

(No later than 14 days after the hearing)

TAKE NOTICE that at its meeting on (date) _____, the Mobile County Commission adopted a Resolution assenting to the vacation of the following highway, alley, or portion thereof:

(Legal Description)

