

ORDINANCE NO. F-0562

**AN ORDINANCE AUTHORIZING THE VACATION AND CONVEYANCE
OF COOLEY AVENUE AND MADISON AVENUE RIGHTS-OF-WAY**

WHEREAS, Article VII, Section 10 of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize and encourage units of local government to enter into intergovernmental agreements with one another; and

WHEREAS, pursuant to the provisions of the Illinois Municipal Code and the Wheaton City Code, the City of Wheaton ("City") has the authority to vacate any street or alley within the City; and

WHEREAS, the City is the owner of a certain right-of-way commonly known as Cooley Avenue and Madison Avenue rights-of-way between Elmwood Street and Pierce Avenue, legally described on *Exhibit 1*, attached to and incorporated in this ordinance by this reference ("subject property"); the subject property is unimproved and has never been used in any way for a street or alley; and

WHEREAS, the Wheaton Park District ("Park District") owns the entire parcel of real estate adjacent to the south boundary of the subject property; and the Park District proposes to use and improve the subject property with a gravel/limestone bicycle-pedestrian path; and

WHEREAS, the City and Park District desire to enter into an intergovernmental agreement pertaining to the vacation, conveyance and use of portions of the subject property so that it may be used for a bicycle-pedestrian gravel/limestone path and promote the best interests of the City, Park District and their residents.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: Pursuant to the provisions of the Illinois Municipal Code and the Wheaton City Code, the subject property is vacated.

Section 2: The Mayor and City Clerk are authorized to sign the intergovernmental agreement between the City and the Park District; a copy of the agreement is on file in the office of the City Clerk. The Mayor and City Clerk are authorized and directed to effect the terms of the intergovernmental agreement by signing the quit claim deed attached to the agreement, and delivering the deed to the Park District.

Section 3: The Park District shall prepare all other documents necessary to implement the terms of the intergovernmental agreement; the Park District shall be responsible for all costs and expenses related to the transfer of title to the subject property.

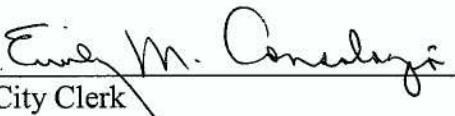
Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes:

Councilwoman Davenport
Councilman Eckhoff
Councilman Gresk
Mayor Carr
Councilman Johnson
Councilwoman Johnson
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: February 20, 2001

Published: February 21, 2001

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EXHIBIT 1

LEGAL DESCRIPTION OF COOLEY AVE. AND MADISON AVE. RIGHT-OF-WAY
BETWEEN ELMWOOD STREET AND PIERCE AVE.

That part of Cooley Avenue as platted and established in Wheaton Park Subdivision, recorded August 20, 1924 as Document 181566 and that part of Madison Avenue as platted as established in John F. Trzebiatowski's Addition to Wheaton, recorded as Document 321205, all being a part of the Northeast Quarter of Section 18 and part of the Northwest Quarter of Section 17, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

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INTERGOVERNMENTAL AGREEMENT FOR THE VACATION,
CONVEYANCE AND USE OF PORTIONS OF THE COOLEY AVE. AND MADISON
AVE. RIGHT-OF-WAYS

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of this 20th day of February, 2001 between the City of Wheaton, DuPage County, Illinois (the "City") and the Wheaton Park District, an Illinois park district, DuPage County, Wheaton, Illinois (the "Park District"). The City and the Park District are sometimes hereinafter referred to individually as a "Party" or jointly as the "Parties".

WITNESSETH:

WHEREAS, Article VII, Section 10 of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et.seq., authorize and encourage units of local government to enter into intergovernmental agreements with one another; and

WHEREAS, pursuant to Section 11-91-1 of the Illinois Municipal Code, 65 ILCS 5/11-91-1, City has the authority, by ordinance, upon a determination that it will serve the public interest, to vacate any street or alley within its jurisdiction, and to provide, by such ordinance, that the owner of one particular parcel of abutting property shall make payment; and

WHEREAS, pursuant to said Section 11-91-1 of the Illinois Municipal Code, the owner making payment shall acquire title to the entire vacated street or alley; and

WHEREAS, City is the owner of certain real property in Wheaton, Illinois, commonly known as the Cooley Ave. and Madison Ave. Right-of-Ways between Elmwood St. and Pierce Ave., Wheaton, IL 60187 (the "Property"); and

WHEREAS, City has never used the Property for a street or alley for vehicular, bicycle or pedestrian traffic, and the Property is unimproved; and

WHEREAS, Park District owns the entire parcel abutting the southern boundary of the Property; and

WHEREAS, Park District proposes to use and improve the Property with a gravel/limestone bicycle/pedestrian path; and

WHEREAS, Park District has proposed to prepare this Agreement and the deed hereinafter described, and to record such deed, at its expense; and

WHEREAS, City has determined that it is in the public interest for City to vacate and convey the Property to Park District, in that the gravel/limestone bicycle/pedestrian path to be constructed on the Property will provide a connection to existing bicycle/pedestrian paths owned or operated by Park District, and will fulfill the original intent of the City's ownership of the Property as a public right-of-way.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Vacating Ordinance and Vacation of Property. The City shall adopt an ordinance in the form substantially of Exhibit A attached hereto and made hereof (the "Ordinance") indicating that Park District, as the owner of the parcel abutting the southern border of the Property, shall make payment for the Property by the preparation of this Agreement, the deed hereinafter described and by the recordation of such deed, all at its sole cost and expense. Thereupon, the City shall record the Ordinance, together with any appropriate plat of vacation.

2. Conveyance of Property. The City shall convey the Property to Park District by recordable quit claim deed, in the form of Exhibit B attached hereto (the "Deed") which Deed shall provide that in the event of any subsequent conveyance of all or any portion of the Property, whether by deed or other instrument of conveyance or by operation of law, so that the Property or the portion thereof conveyed shall no longer be used for public purposes, title to the Property or any portion thereof so conveyed shall automatically revert to City. Park District shall prepare State of Illinois and City of Wheaton transfer tax declarations indicating the conveyance of the Property to Park District is exempt from real estate transfer taxes, to enable the Deed to be recorded, and both Parties shall sign such transfer tax declarations.

3. Legal Description of Property; Survey or Drawing of Property; No Documents Affecting Title to Be Entered Into Without Park District Consent. City shall, prepare, or cause to be prepared, a legal description of the Property, to be attached to the Ordinance and the Deed, and shall deliver to Park District all drawings or surveys of the Property in its possession at the time of conveyance of the Property. From the time this Agreement is executed by both Parties until the time

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the Property is vacated and conveyed to Park District, City shall not enter into and/or record any agreements which could affect title to the Property, including but not limited to granting an easement to the Wheaton Sanitary District, without Park District's written consent to same, which consent shall not be unreasonably withheld.

4. Use of Property by Park District. Park District shall use the Property for public purposes only, including but not limited to a bicycle/pedestrian path.

5. Real Estate Taxes. City represents to Park District that the Property is currently exempt from real estate taxes, and City shall reasonably cooperate with Park District as may be requested by Park District to enable Park District to apply for and obtain an exemption from real estate taxes for the Property, in Park District's name.

6. Counterparts. This Agreement may be executed in duplicate counterparts, and all of such counterparts, taken together, shall be deemed one and the same original instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 20th day of February, 2001.

WHEATON PARK DISTRICT

By: _____
President, Board of Park Commissioners

ATTEST: _____
Robert Dunsmuir, Secretary

CITY OF WHEATON

By: _____
James Carr
Mayor

ATTEST: _____
Emily M. Consalvo
City Clerk

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EXHIBIT A

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ORDINANCE NO. F-

**AN ORDINANCE AUTHORIZING THE VACATION AND CONVEYANCE
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Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Mayor

ATTEST:

City Clerk

Roll Call Vote:

Passed:

Published:

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EXHIBIT B, FORM OF QUIT CLAIM DEED

QUIT CLAIM DEED

THE GRANTOR, the City of Wheaton, DuPage County, Illinois, for and in consideration of Ten and 00/100's Dollars and other good and valuable consideration in hand paid, does hereby convey and quit claim to the Wheaton Park District, 666 South Main Street, Wheaton, Illinois 60187, all interest in the following described real estate situated in the County of DuPage, in the State of Illinois, to wit:

INSERT LEGAL DESCRIPTION OF PROPERTY

Commonly known as Cooley Ave. and Madison Ave. Right of Ways Between Elmwood St. and Pierce Ave., Wheaton, Illinois 60187

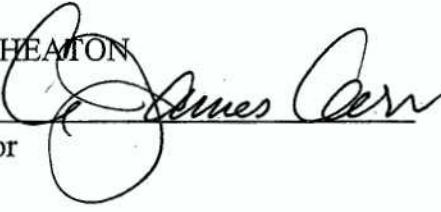
Provided, however, that upon any subsequent conveyance, whether by deed or other instrument of conveyance or by operation of law, of all or any portion of the property herein conveyed so that all of the property herein conveyed or any portion thereof shall not be used for public purposes, title to all of the property herein conveyed, or any such portion, shall automatically revert to the grantor herein.

Dated this 21st day of February, 2001

CITY OF WHEATON

By:

Mayor



(SEAL)

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SCHEDULE 1 TO EXHIBIT B

LEGAL DESCRIPTION OF COOLEY AVE. AND MADISON AVE. RIGHT-OF-WAY

BETWEEN ELMWOOD STREET AND PIERCE AVE.

That part of Cooley Avenue as platted and established in Wheaton Park Subdivision, recorded August 20, 1924 as Document 181566 and that part of Madison Avenue as platted and established in John F. Trzebiatowski's Addition to Wheaton, recorded as Document 321205, all being a part of the Northeast Quarter of Section 18 and part of the Northwest Quarter of Section 17, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois.

STATE OF ILLINOIS)) SS
COUNTY OF DUPAGE)

I, JANET CHRISTMAN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that C JAMES CARR, personally known to me to be the Mayor of the City of Wheaton and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, and affixed the seal of the City of Wheaton thereto, as his free and voluntary act, and as the free and voluntary act of the City of Wheaton, for the uses and purposes therein set forth.

Given under my hand and seal this 21st day of February, 2001

Janet O. Christian
Notary Public

My commission expires on August 27, 2002

Exempt under the provisions of 35 ILCS 200/31-45(b), deeds relating to property transferred between governmental bodies.

Mark B. Horton

Buyer, Seller or Representative

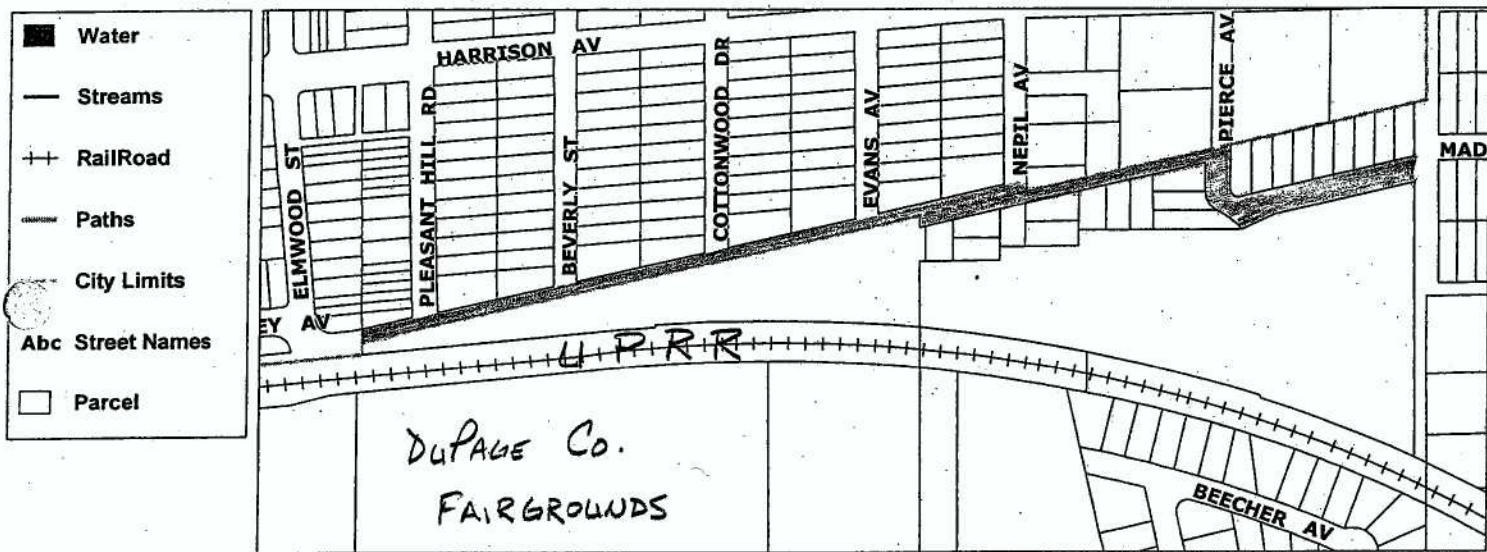
Prepared and after recording return to:

Send tax bills to:

Carol L. Gloor
Friedman and Holtz, P.C.
11 E. Adams, Ste. 1600
Chicago IL 60603

Wheaton Park District
Attention: Executive Director
666 South Main Street
Wheaton, IL 60187

wheaton



SCALE 1 : 6,046



COOLEY AVENUE - MADISON AVENUE
RIGHTS OF WAY VACATION