

ORDINANCE NO. F-1136

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF WHEATON ARTICLE IV. VACATION PROCEDURE

WHEREAS, the City of Wheaton ("City") is an Illinois Home Rule Municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the City owns unimproved property, including City owned rights of public way; and

WHEREAS, the Corporate authorities of the City of Wheaton find that it is in the best interest of its residents to have a plan to determine the fair and just compensation for vacation of the unimproved, unnecessary rights of way.

NOW THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois that the Wheaton City Code 1996 is hereby amended to provide as follows:

Section 1: That Chapter 58, Article IV, "Vacation Procedure" is hereby amended by deleting Article IV in its entirety and replacing it with a new Article IV, "Vacation Procedure" which is attached hereto as Exhibit A, and made a part hereof.

Section 2: All ordinances and parts of ordinances in conflict with or inconsistent with the provisions of this ordinance are hereby repealed to the extent of any such conflict or inconsistency.

Section 3: That if any part or portion of this ordinance shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remainder of this ordinance.

Section 4: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

Mayor

ATTEST:

Evelyn M. Connelley
City Clerk

Ayes: Roll Call Vote:
Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Mayor Carr
Councilman Levine

Nays: None
Absent: Councilman Johnson
Councilman Suess

Motion Carried Unanimously

Passed: February 21, 2006

Published: February 22, 2006

EXHIBIT A

ARTICLE IV. VACATION PROCEDURE

Sec. 58-136. Findings.

The City has acquired certain rights of public way by subdivision dedication, easements, purchase, and otherwise; the City recognizes there are occasions whereby it is disadvantageous to improve such rights-of-way for public streets or alleys. The City further recognizes that in certain instances such public way is created by taking a portion of the private land on either side thereof, and a present owner of land on one or both sides of such public way may desire to restore such land to private taxable use.

(Code 1968, § 20-139)

Sec. 58-137. Policy determined.

The City, in making its findings under this article, elects to create a uniform policy to determine a fair and just compensation for the City's vacation of its unnecessary public ways.

(Code 1968, § 20-140)

Sec. 58-138. Compensation formula.

The City adopts the following formula to determine fair and just compensation for vacation of streets, alleys or public ways:

- (1) Fair and just compensation determined by a certified appraiser (MIA) hired by the City for the following.
 - a) Public ways adding lot width of twenty five percent (25%) or more to an adjoining property;
 - b) Public ways with land area greater than 3,600 square feet, or
 - c) Public ways of any size that would be vacated to an adjoining property that is zoned other than R-1, R-2, R-3, or R-4.

The petitioner shall deposit with the City \$2,500 to cover the cost of the appraisal and shall be responsible for the actual cost of the appraisal. Should the petitioner request to withdraw the vacation petition before the appraisal is ordered, the deposit will be refunded in full.

(2) Public ways not meeting the characteristics set forth in section 58-138 (1) shall have fair and just compensation determined on a square foot basis by the average of the unimproved land value of the adjoining properties as established by the Township Assessor's most recent evaluation. If the public way adjoins property which has no value (tax exempt), the average of the unimproved land value as established by the Township Assessor's most recent evaluation of the nearest two similar properties shall be used. Should the City determine the unimproved land value as established by the Township Assessor is not representative of fair and just compensation, fair and just compensation shall be determined as provided for by Section 58-138 (1).

(3) No fair and just compensation shall be required for public ways that necessitate a permanent easement over the entire public way land area.

If required by the City, the petitioner/owner shall sign a restrictive covenant reciting that the vacated public street, alley, or public way shall be used consistent with the use represented in the vacation petition. The restrictive covenant shall be in a form approved by the City attorney.

(Code 1968, § 20-141)

Sec. 58-139. Formula exception

The City recognizes that there may be unique situations whereby the rigid application of the compensation formula provided in section 58-138 may result in an inequity to the City or the petitioner; it thereby recognizes that by an ordinance for substantial cause shown it may adopt a different formula as to a particular public way.

(Code 1968, § 20-142)

Sec. 58-140. Initiating petition.

(a) Any person abutting any public streets, alleys or rights-of-way within the City limits who wishes to institute proceedings for the vacation of such street, alley or public way shall file with the City clerk a written petition setting forth the following information:

(1) The name and address of the petitioner;

(2) A complete disclosure of interest of the ownership of petitioner's property, including the names of the trustees and the beneficial owners of such property; if such property is owned by a corporation, a disclosure of the shareholders of such corporation including the names of the officers and directors of such corporation;

(3) The common description of the street, alley or public way to be vacated as well as the legal description thereof;

(4) The names and addresses of all property owners within 250 feet of the street, alley or public way to be vacated; and

(5) A plat of vacation for any vacation of any portion of a street, alley, or public way less than one block in length, unless such portion consists of the entire street, alley or public way; or when the City determines that such a plat is necessary to fully describe the vacation.

(6) A statement as to the type of any known public service facilities (electric, gas, water, sewer, telecommunications, etc.) over, under, or upon the public way, and the name of the public utility owning the same.

(7) A fee in the amount of \$350.00 to cover the costs of administration shall accompany the petition submitted under this section.

(Code 1968, § 20-143)

Sec. 58-141. Public hearing.

Within 60 days of the receipt of the petition by the City clerk for the vacation of any public street, alley, or public way, the City clerk shall publish in a newspaper of general circulation within the City limits a notice setting forth the date on which a public hearing will be held for a determination as to whether the City council shall vacate the subject street. Such notice shall be published no less than 15 days nor more than 30 days prior to such public hearing. In addition to such notice by publication, the City clerk shall send a general letter notifying the property owners within 250 feet of the street, alley, or public way to be vacated and to all utility companies notifying them of such public hearing. The notification letter shall be mailed not

less than 15 days, nor more than 30 days, prior to the public hearing. The City council shall conduct the public hearing as provided in this section.

(Code 1968, § 20-144)

Sec. 58-142. Final determination.

Upon the determination of the City council that the vacation of the street, alley or right-of-way which is the subject of a petition filed under this article is in the best interests of the citizens of the City, and upon an affirmative vote of three fourths (3/4) of the membership of the City council qualified to vote on an ordinance, an ordinance shall be passed by the City council vacating the subject street, alley or right-of-way.

Sec. 58-143. Costs.

All other costs not heretofore delineated in this section incurred by the City associated with the consideration or the vacation of public ways, including but not limited to legal notice, court reporting, and/or recording fees, shall be borne by the petitioner.

(Code 1968, § 20-145)

Secs. 58-143--58-175. Reserved.
