

PROPERTY, VACATION OF

Chapter 142

PROPERTY, VACATION OF

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[HISTORY: Adopted 11-07-89, Ord. 89-29. Repealed and reenacted 02-17-98, Ord. 98-01]

GENERAL REFERENCES

Streets—See Ch 155.

§ 142-1 Declaration of Policy.

The town council hereby finds and declares that the general policy of the town is to prohibit the vacation or divesting of any right, title or interest of the town in and to any land, including any roadway or easement. Any application for vacation pursuant to this chapter may be granted only in cases where the town council, in the exercise of its sole and exclusive discretion, first finds an overriding public interest favors the vacation.

§ 142-2 Definitions.

As used in this chapter 142, unless the context otherwise requires:

- A. *Access easement* includes any platted or designated public improvement dedicated to the town for the purposes of vehicular or pedestrian access or travel, whether or not it has been used as such.
- B. *Easement* includes any platted or designated public easement dedicated to the town, whether or not it has been used as such.
- C. *Roadway* includes any platted or designated public street, alley, lane, parkway, avenue, road or other public way, whether or not it has been used as such.

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- D. *Vacation* means the extinguishment by ordinance of all right, title or interest of the town in and to any roadway or easement.

§ 142-3 Vacation By Ordinance.

- A. All right, title or interest of the town in and to any roadway or easement, shall be divested only upon adoption by the town council of an ordinance vacating such property or portion thereof located within the corporate limits of the town. If a roadway constitutes a boundary line of the town, it may be vacated only by a joint action of the board of county commissioners of the county and the town council.
- B. Any ordinance effecting a vacation under this article shall contain the following findings, if applicable:
1. That no land adjoining any roadway to be vacated is left without an established public road connecting said land with another established public road.
 2. That the roadway or easement to be vacated is no longer necessary for present or prospective public use or convenience.

§ 142-4 Vacation Procedures.

The following procedures shall be adhered to by person(s) requesting the vacation of any roadway or easement:

- A. Attendance at a pre-application conference held in the manner described in section 180-19 (C)(5)(a) of the Town of Frisco Zoning Ordinance.
- B. Submission to the town manager of a written application that includes the following information:
1. Name, address and telephone number of the applicant(s). An application submitted by multiple applicants shall designate one person from among them to serve as the primary applicant.
 2. Accurate legal description of the roadway or easement to be vacated.
 3. A map showing the roadway or easement to be vacated and abutting properties. The town manager or his/her designee may, in the exercise of his/her sole and exclusive discretion, require the applicant to furnish a survey of the roadway or easement to be vacated.
 4. Names and addresses of all record owners of property adjacent to that portion of the roadway or easement to be vacated. If possible, all such record owners should sign the application for vacation.

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5. Reasons for the requested vacation.
 6. Certification by the applicant(s) that the statements referred to in subsection 142-3(B) (1) above are true.
 7. Signature of the applicant(s).
- C. Review of the proposal by the town staff and preparation of a staff report, and in the case of the proposed vacation of an easement, other than an access easement, preparation of a proposed vacation ordinance.
- D. Vacations of roadways and access easements must be referred to the planning commission for a public hearing and recommendation to the town council. The director of the community development department or his/her designee may refer the vacation of an easement, other than an access easement, to the planning commission for a public hearing and recommendation to the town council, if he/she determines that such a referral would assist the town council in determining whether or not to grant the vacation request.
- E. After a public hearing, the planning commission may either continue the matter for further information and study for not more than thirty (30) days or forward its recommendation to approve, disapprove or conditionally approve the application to the town council and the applicant(s). Any application forwarded to the town council will be in the form of an ordinance.
- F. The town council will consider the proposed vacation ordinance and render its decision either to adopt or deny the ordinance on first reading in accordance with the requirements of the Charter with respect to the adoption of ordinances. Prior to adoption of the vacation ordinance on first reading, the town council shall find that an overriding public interest favors the vacation.

§ 142-5 Public Notice.

Public notice will be given at least once prior to final adoption of the vacation ordinance in the manner provided for in subsection (1) through (3) of section 180-46(E) of the Town of Frisco Zoning Ordinance.

§ 142-6 Valuation of Vacated Property.

If the town council adopts on first reading a vacation ordinance vacating a roadway or access easement, the town manager or his/her designee will cause an appraisal to be made at the expense of the applicant(s), unless the town manager or town council waives such appraisal. An appraisal is not required for the vacation of an easement, other than an access easement, unless specially requested by the town manager or town council. The appraisal will include the following information:

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- A. Valuation of the property being vacated;
- B. Valuation of any property that may be benefitted by the vacation, valued prior to vacation;
- C. Valuation of any property that may be benefitted by the vacation, valued after vacation; and
- D. Any other determinations requested by the town council.

§ 142-7 Payment of Costs.

The applicant or primary applicant is responsible for the payment of any costs associated with the vacation including, without limitation, payment for administrative services performed by the community development department, appraisals, surveys, recording fees, documentary fees, legal services rendered to the town in connection with the application, and other customary costs in the following manner:

- A. A development review account shall be established at the time the vacation application is submitted to the town manager. Such development review account will be managed pursuant to section 180-31(D), excluding subsection 180-31(D) (4) (c).
- B. If the town incurs costs beyond the amount deposited in the vacation review account and the applicant or primary applicant does not pay those costs within thirty (30) days after written notice from the town, the town shall be entitled to certification of the assessment for sale or a lien for those costs on the property owned by each applicant, which lien may be perfected and foreclosed in the manner provided in C.R.S. §§ 38-22-101 et seq., as amended.

§ 142-8 Vacation of Portion of Request.

The town shall have the right, in its sole and exclusive discretion, to vacate only a portion of the total area requested for vacation.

§ 142-9 Reservation of Rights-of-Way or Easements.

The town may reserve any right-of-way or easement for the continued use of existing or future sewer, gas, water or similar pipelines and appurtenances, for overland drainage, drainage facilities or canals and appurtenances, and for electric, cable television, telephone and similar lines and appurtenances, or any other public purpose. Notwithstanding the foregoing, the town is presumed to have reserved in any property vacated under this chapter all necessary, useful or common easements related to underground utilities or services.

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§ 142-10 Conditions on Vacation.

The planning commission may recommend, and the town council in the ordinance effecting a vacation may impose, reasonable conditions on said vacation, to preserve and promote the public health, safety and welfare of the inhabitants of the town and the public generally. Such reasonable conditions may include the payment of money to the town as consideration for a vacation, when the vesting of title upon vacation may confer a benefit upon the new owner of the vacated roadway or easement, where the town has purchased or may purchase a roadway or easement to replace that being vacated, to avoid a windfall to the new owner, or for any other reason deemed by the town council to be in the public interest.

§ 142-11 Recordation of Vacation.

In the event of a vacation in accordance with this article, the documents vacating such property or interest in property, including but not necessarily limited to any resolution, ordinance, deed, conveyance document, plat or survey, shall be recorded in the office of the clerk and recorder of the county in which such property is located.

§ 142-12 Preservation of Access.

No roadway or part thereof shall be vacated so as to leave any land adjoining said roadway without an established public road connecting said land with another established public road.

§ 142-13 Vesting of Title Upon Vacation.

Any ordinance effecting a vacation under this article shall state to whom title to the vacated land shall vest upon vacation. Title to the lands included within a roadway or so much thereof as may be vacated shall vest in accordance with the provisions of C.R.S. § 43-2-302 or its successor statute.

§ 142-14 Adjacent Platted Lands.

Where title to any vacated property vests with the owner of adjacent platted land, said owner shall, within 90 days of the adoption of the ordinance effecting such vacation, take all necessary steps to include said vacated property within the plat of the adjacent land.