HOW TO CLOSE A STREET CALLED DESIRE
A Legal History of Streets
(Abridged)

Susan C. Rocha
Denton, Navarro, Rocha & Bernal, P.C.
San Antonio, Texas

Mindy Ward
City Attorney
City of San Angelo, Texas

Texas City Attorneys Association
Austin, Texas
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Mindy Ward is the City Attorney for City of San Angelo, Texas, a position she has held since 1981. For 3 years prior to her appointment she served as the city’s First Assistant City Attorney and Municipal Court Prosecutor. She is a graduate of Texas Tech Law School (1977) and Ohio State University (1974). A child prodigy - she has more than 28 years of municipal law experience. She started in San Angelo when she was 12.

Susan C. Rocha is a partner in the Law firm of Denton, Navarro, Rocha & Bernal in San Antonio, Texas. She is a 2002 IMLA Local Government Fellow and serves as the City Attorney for five municipalities surrounding San Antonio and in South Texas. She was an Assistant General Counsel for the Texas Municipal League and a Senior Intergovernmental Relations Officer for the U. S. Department of Housing and Urban Development. She is also a lobbyist and during the upcoming 2007 Texas Legislative Session she will be representing the cities of San Antonio, Austin, Dallas and Round Rock. She is a 1982 graduate of the University of Texas School of Law. She is a former junior high and high school social studies teacher.
HOW TO CLOSE A STREET CALLED DESIRE

A Legal History of Streets
(Abridged)

We took on this project to provide our fellow city attorneys with a short, easy handbook with the relevant case law and legal forms for street closures. While closing a street may seem to be a simple process, there are always some hidden land mines. Recent lawsuits have expanded on the inverse condemnation theory based on cut-off of access. This paper will provide you with the statutory authority and cases that define a city’s authority and the procedure for vacating streets, both “paper” and real ones. We hope that you will find it useful.

I. THE GOOD OL’ DAYS

Many of the general laws enacted by the legislature concerning city streets were enacted last century and remain in effect. These laws appeared in the titles of the civil statute governing cities, towns, and villages. They were largely codified without substantive change into the Transportation Code in 1995.

The Act of 1858 providing for the general incorporation of municipalities (which forms the basis of today’s Type B cities) contained the simple provision that the city exercise “control” over city streets. It stated:

The Board of Alderman shall have and exercise control of the streets and other public places in the town . . .

This law was amended in 1895 to provide that the control by the city of the streets was “exclusive” and also extended to “alleys”. This amendment also added a little known provision. A work requirement of “all male inhabitants between the ages of twenty-one to forty-five years, except ministers of the gospel actually engaged in the discharge of their duties.” The road work required on city streets and alleys could not exceed five days a year. One could avoid compulsory road duty by furnishing a “substitute or a sum of money (not to exceed $1.00 for each day’s work demanded) to employ such substitute.” Session Laws – Acts 1895, 24th Leg. pp. 89, 90, Ch. 63; 23 David B. Brooks, Texas Practice: Municipal Law and Practice § 20.01 (1999).

Courts have long recognized the general authority of a city over its street. In a very early case decided a few years after the Civil War, the Texas Supreme Court held that a “hog law” adopted by the City of Waco that prohibited hogs at large on a city streets was a valid ordinance adopted pursuant to the 1858 Act, which gave towns and villages “exclusive control” over city streets. The Plaintiffs, presumably the hog owners, had alleged in the case that the animals were actually “street scavengers” and more beneficial to the City. The court disagreed, holding that both as a matter of street control and the abatement of nuisances, that the city ordinance was enforceable. City of Waco v. Powell, 32 Tex. 258, 272, (Tex. 1869)
II. HOW DOES A CITY GET STREETS?

City streets come into existence by varied means. Plats may be prepared, approved, and filed by private developers with public authorities in which streets are affirmatively and expressly dedicated to the public. Other streets may ripen into existence as a prescriptive easement, in which the public has acquired the right to use a roadway as a consequence of continued use over a period of time in a manner adverse to the property owner. *Eakens v. Garrison*, 278 S.W.2d 510, 515 (Tex.Civ.App. - Amarillo 1955, writ ref’d n.r.e.). Other streets may be found to have been impliedly dedicated for public use. And, of course, a street can be acquired by purchase or condemnation by the city. A city rarely acquires the fee simple estate of property for street purposes. It is generally given or acquires a surface right-of-way easement with the underlying fee owner retaining that interest to the extent that it is not in conflict with the street easement. 23 David B. Brooks, Texas Practice: Municipal Law and Practice § 20.05 (1999).

III. STATE LAW AUTHORITY FOR MANAGEMENT OF PUBLIC STREETS

During the Legislature’s recodification of statutes, the City’s authority to regulate streets was moved to the Transportation Code. There has been no recent legislation pertaining to street closing other than a 1993 law authorizing Home Rule cities to “regulate or restrict access” on city streets “on which the dwelling of a former President of the United States is located.” Tex. Transp. Code § 311.904

A. General Law Cities

  General Authority of General-Law Municipalities
  (a) A general-law municipality has exclusive control over the highways, street, and alleys of the municipality
  (b) The municipality may:
      (1) abate or remove an encroachment or obstruction on a highway, street, or alley;
      (2) open, change, regulate, or improve a street; or
      (3) put a drain or sewer in a street, prevent the obstruction of the drain or sewer, or protect the drain or sewer from encroachment or damage.
  (c) To carry out its powers under this section, the municipality may:
      (1) regulate or change the grade of land; and
      (2) require that the grade of land be raised by filling an area.

- Texas Transp. Code Ann. § 311.008
  Closing of Street or Alley by General-Law Municipality
  The governing body of a general-law municipality by ordinance may vacate, abandon, or close a street or alley of the municipality if a petition signed by all
the owners of real property abutting the street or alley is submitted to the
governing body.

B. **Home Rule Cities**
- Tex. Transp. Code Ann. § 311.007 Closing of Street or Alley by Home-Rule
  Municipality
  A home-rule municipality may vacate, abandon, or close a street or alley.

C. **Difference between a Home Rule City and a General-Law City**
A petition is required to close a street in a general-law municipality

IV. **AUTHORITY TO CLOSE STREET**

A. **Case Law – General Authority**
- The city council found that it would be in the best interest of the citizens
  of the city to exchange a portion of street for another strip of land owned
  by decedent and needed by city for right of way purposes and re-routing
  the highway through the city. The city had authority under arts. 1017,
  1085b, and 1086 to enact an ordinance vacating and abandoning a portion
  of that street, and to convey by deed that portion of the street to decedent
  as owner of the only property abutting that part of the street vacated and
  abandoned in exchange of property of decedent needed for highway right
  1958)

- Power to vacate streets was vested in city only as representative of public
  and for public benefit. *Texas Co. v. Texarkana Machine Shops*, 1 S.W.2d

- A city may vacate and close a street or alley by petition of an abutter for
  his benefit when vacation is also for the benefit of municipality at large.
  *Hicks v. the City of Houston* 524 S.W.2d 539 (Tex.Civ.App. - Houston
  [1st Dist.] 1975) writ ref’d n.r.e

- City was not required to obtain landowners consent when it sold portion of
  street in front adjoining properties and restricted traffic on portion of street
  abutting landowner’s property. *Jordan v. Landry’s Seafood Restaurant,
  denied)

B. **City Council Has Legislative Discretion to Close Streets (or to Open Them)**
- It is well settled, and it has been affirmed repeatedly by numerous judicial
  decisions of the several jurisdictions, that in the absence of constitutional or
charter restrictions, municipal discretion includes the nature and extent of the improvement, the location of the improvement, the plans and manner of construction, the nature and kind of material to be used, the cost, the selection of a plan for financing the improvement from among the plans authorized, and the opening and vacation of streets, alleys and public ways. The expediency of vacating streets and alleys, as already stated, rests primarily in the discretion of the municipality. The municipality’s determination is conclusive, in the absence of fraud or collusion, and not subject to review by the courts. 13 McQuillin Mun. Corp. § 37.25 (3rd Ed.)

- In Dykes v. the City of Houston, 406 S.W.2d 176 (Tex. 1966). The Court ruled against a determined land owner who fought to open a dedicated road that the City of Houston sought to keep unimproved and closed. “The opening of a street with the commensurate demands upon the city for maintenance and supervision is within the discretion of a home rule city, such as Houston. An individual, even if he an abutting land owner, does not have the right to determine when a street will be opened by the public; such right is vested solely in the governing body of the city.” Dykes, 406 S.W.2d at 177.

V. WHO CAN SUE OVER A CLOSED STREET


VII. LEGAL RIGHTS CLAIMED BY PROPERTY OWNERS AND OTHERS

A. Adverse Possession

Often with “paper” streets an abutting owner will claim adverse possession against the city. The landowner will have fenced off the “paper” street and included it in his property. It is well established that the rights of the public in a street or alley cannot be divested by adverse possession of another for the statutory period. Farmers & Merchants Compress & Warehouse Co. v. Dallas, 335 S.W.2d 854 (Tex.Civ.App. - Dallas 1960); Young v. City of Lubbock, 130 S.W.2d 418 (Tex.Civ.App. – Amarillo 1939); Town of Refugio v. Heard, 95 S.W.2d 1008 (Tex.Civ.App. – San Antonio 1936). Thus, no common title can arise out of a long, continued encroachment or obstruction of a public street or alley. McQuillin Mun. Corp. § 30.179 (3rd Ed.)

B. Right to Injunction

An injunction may not be granted to stay or prevent the governing body of an incorporated city from vacating, abandoning or closing a street or alley except on the suit of a person:
1. who is the owner or lessee of real property abutting the part of the street or alley vacated, abandoned, or closed; and

2. whose damages have neither been ascertained and paid in a condemnation suit by the city nor released.


Tex. Civ. Prac. & Rem. Code § 16.005 provides for a two year statute of limitation period for legal actions brought against a city following the closing or abandonment of a street or alley. This legislation was enacted in 1934 and is applicable to any incorporated city. This two year of statute of limitations from a suit “for any relief” remains current and has not been amended since 1934.

C. Takings/Inverse Condemnation

Article 1, Section 17 of the Constitution of Texas provides that “No person’s property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made…”.

If a property owner’s access is not materially and substantially impaired, or if the restriction of access merely results in a diversion of traffic or circuitry of travel, then there has been no damage within the meaning of Article 1, Sec. 17 of the Texas Constitution. State v. Wood Oil Distrib., Inc., 751 S.W.2d 863, 865 (Tex. 1988); City of Austin v. Avenue Corp., 704 S.W.2d 11, 13 (Tex. 1986); City of San Antonio v. Olivares, 505 S.W.2d 526, 529-530 (Tex. 1974); City of Houston v. Fox, 444 S.W. 2d 591, 593 (Tex.1969); City of Beaumont v. Marks, 443 S.W.2d 253, 257 (Tex. 1969); Archenhold Auto. Supply Co. v. City of Waco, 396 S.W.2d 111, 114 (Tex. 1965); DuPuy v. City of Waco, 396 S.W.2d 103, 109-10 (Tex. 1965); L-M-S, Inc. v. Blackwell, 233 S.W.2d 286, 290 (Tex. 1950).

D. Due Process

Both the U.S. Const. Amend. XIV, §1 (Due Process Clause) and Tex. Const. Art. 1, §19 provide that a person shall not be deprived of life, liberty or property without due process of law, and that private property shall not be taken for public use, without just compensation.

E. Equal Protection

U.S. Const. Amend. XIV, §1 (Equal Protection Clause); Tex. Const. art. 1, §3; Levine v. Maverick County Water Control & Improvement Dist. No. 1, 884 S.W.2d 790, 795 (Tex.App. – San Antonio 1994, writ denied) (“The Equal
Protection Clause required a state agency or political subdivision to apply its rules and regulations in a fair and equitable manner.

VIII. TYPES OF OWNERSHIP AND INTEREST IN STREETS

A. Easement Owned by City

The city only owns the right-of-way for an easement in a street. The underlying fee interest to the center line of the street is owned by abutting owners. This fee is subject to the public’s easement in the street. The abutting owners own a private easement in the portion of the street abutting his property where such owner purchased with reference to a plat or map showing such street. Dykes v. City of Houston, 406 S.W.2d 176 (Tex. 1966).

B. Fee Simple Owned by City

A city rarely acquires the fee simple estate of property for street purposes, but is generally given or acquires a surface right-of-way easement with the underlying fee owner retaining that interest to the extent that it is not in conflict with the street easement. 23 David B. Brooks, Texas Practice: Municipal Law and Practice § 20.05 (1999). Wallace v. City of Coleman, 30 S.W.2d 348 (Tex.Civ.App. - Austin 1930, writ granted) affirmed Stanbery v. Wallace, 45 S.W.2d 198 (Tex.Com.App. 1932)

C. Abutting Land Owner

A person who owns land abutting a street which has been dedicated to the public by a plat, conveyance or prescription normally owns the underlying fee title to the center of the street and that portion of the street actually abutting his property. This fee title is encumbered with a public easement and perhaps private easements. When the owner of property abutting a public street conveys the land to another, such conveyance carries with it the fee to the center of the street unless a contrary intention is expressly declared.

In Cox v. Campbell, 135 Tex. 428, 143 S.W.2d 361 (Tex. 1940), the court cited Mitchell v. Bass, 26 Tex. 372, 1862 (Tex. 1862) for the following rule: “The established doctrine of the common law is, that a conveyance of land bounded on a public highway, carries with it the fee to the center of the road as part and parcel of the grant. Such is the legal construction of the grant, unless the inference that it was so intended is rebutted by the express terms of the grant. The rule announced in this case has been consistently followed and applied in this state.”

In addition to the underlying fee interest to the center line of the street owned by the abutting owner, which fee is subject to the public’s easement in the street, the abutting owner owns a private easement in that portion of the street abutting his property or such owner purchased with reference to a plat or map showing such
street. The nature of this private easement was described in the case of *State v. Meyer*, 403 S.W.2d 366, 370 (Tex. 1966) as a right of access. This private right of access is, however, subject to certain limitations under the police power of a city.

**D. People Who Do Not Abut the Street – Special Interest**

Another class of persons owning a special interest in streets is represented by people who, though not owning property actually abutting that particular portion of the street concerned, purchased their property with reference to a plat or map showing the street involved. Such people own a private easement in the street and alleys shown in the plat or map by reference to which they purchased their property. *Oswald v. Grenet*, 22 Tex. 94 (Tex. 1958). This private easement of such a purchaser extends to not only street and alleys upon which his property abuts, but to all streets, alleys and public ways shown on the plat or map in reference to which he purchased his lot. *City of Corsicana v. Zorn*, 97 Tex. 317, 78 S.W. 924 (Tex. 1904).

**E. The Public in General**

Another entity or group of persons who own a special type of interest in streets is the public. The public, all citizens in general, own a public easement in the streets, subject to exercise of police power by the City. This public easement entitles them to use the street for normal street purposes. *Town of Refugio v. Strauch*, 29 S.W.2d 1041 (Tex.Com.App. 1930).

**F. City as Trustee of Public Interest**

Still another entity which owns an interest in streets is the city in which they are located. The city, in the capacity of a trustee for the public, holds title to the public easements in streets. Courts have described the nature of the interest owned by the city as follows: “The city controls the streets for the public. It has no proprietary title or right to exclusive possession. Its rights of control are restricted by its Trusteeship…thus the interest in which a city has in its streets and alleys are unique and legally sui generis. It has no proprietary title but exercises many of the rights of title on behalf of the public. It is less than a private easement in that the city cannot recover damages for the obstruction of a street. It is more than a private easement in that control of the street is greater. *City of Mission v. Popplewell*, 156 Tex. 269, 294 S.W.2d 712 (Tex. 1956)

**IX. SPECIAL DEPOSIT FOR SALE FUNDS FROM STREET CLOSURE**

Any funds obtained from the sale of right-of-way should be deposited into the city’s street maintenance fund as required by Tex. Loc. Gov’t Code 253.001.
X. **ABANDONMENT OR VACATING OF A PUBLIC EASEMENT BY ORDINANCE**


XI. **SALE OF REAL PROPERTY**

Tex. Loc. Gov’t Code 272.001 (a) sets out the process for selling and exchanging most real property owned by a city. Normally before land can be sold or exchange, notice to the public must be published in a newspaper of general publication.

- Notice must include a description of the land, including location, and the procedure by which sealed bids must be submitted, notice must be published on two separate dates, and the sale or exchange may not be made until 14 days after the date of the second publication.

- However, the notice and bidding requirement DOES NOT APPLY to the following:
  
  (b) (2) streets or alleys, owned in fee or used by easement;
  (3) land or a real property interest originally acquired for streets, right-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, easements or other public purposes, including transactions partly for cash;

- Land described in the exceptions above may only be sold or exchanged for fair market value, except if sold to the abutting land owners who own the underlying fee simple. Tex. Loc. Gov’t. Code 272.001(b).

XII. **RECENT CASES WITH CLAIMS ABOUT CUT-OFF OF ACCESS**

The most difficult situation the Council will face is the closing of an actual opened and maintained public street. While paper streets may seem to be easier to do and defend, both closures can bring a possible claim of public access.

*Carson v. State of Texas*,
117 S.W.3d 63 (Tex.App. 2003, no writ)

Property owners brought an inverse condemnation action against the State after the State decided to reconfigure an intersection which allegedly deprived owners of access to the road. This case dealt with the intersection at Wonder World Drive and IH-35. Previously, the landowners had access to the IH-35 frontage road and Wonder World Drive. In the State’s reconfiguration of the intersection, the owners lost their access to Wonder World Drive. Their historical access to Wonder World Drive was by way of a bus depot driveway. The Court cited cases that held that a property
owner is not entitled to compensation unless his access is materially and substantially impaired. The Court held that the landowner is not entitled to compensation if he “has reasonable access to his property after construction of the public improvement. The benefits of private ownership have been assured so long as there is reasonable access and an action for compensation under the Constitution will not lie where such is the case.” DuPuy v. City of Waco, 396 S.W.2d 103,109 (Tex. 1965). The landowners retained full access to the IH-35 frontage road. So while access to their properties may be slightly more circuitous, requiring a turn onto the frontage road, their properties were not materially or substantially impaired.

City of San Antonio v. TPLP Office Park Properties LTD
  pet. rev. filed (Feb 24, 2005)
  All briefs filed October 24, 2005
  Petition for Review not yet decided.

Business owners brought action to contest validity of city’s closure of a private driveway that connected a public street in a business park to a public street in a residential neighborhood. Previous zoning by the San Antonio City Council provided that there was to be “no access to Freiling Drive (the residential street) from the commercial zoned property.” Owner of the office complex bought a neighboring triangular piece of land that included driveway access to Freiling Drive. This piece of property was partially located in the City of Balcones Heights. The office complex owner dedicated the driveway easement (the Freiling driveway) on this separate piece of property to the benefit of all property owners at the office complex to use to drive onto Freiling Drive. City of San Antonio erected a barricade and signs notifying the public of its intent to close the private driveway.

The Court of Appeals held that: 1) The attempted closure of the private driveway by the City constituted and unreasonable exercise of the city’s police powers; 2) The traffic entering and leaving the Park Ten Office Complex from the Freiling driveway did not create a safety hazard or a nuisance; and 3) the City’s attempted closure of the Freiling driveway would not be in furtherance of the public interest and would not promote the safety, comfort, health, convenience, and/or general welfare of the public or the community; 4) The closing of the Freiling driveway would result in a material or substantial impairment of access and the City’s closure was a regulatory taking.

Town of Palm Valley v. Johnson
17 S.W.3d 281 (Tex.App. – Corpus Christi 2000)

Developer’s property, which was adjacent to the end of a street, abutted street for purposes of Transportation Code provision that the city could not vacate, abandon, or close street by ordinance, unless petition was signed by all owner of real property abutting street was submitted to the city. Developer was entitled to all rights of abutting property owner including access to the street.
The wrinkle in this opinion is that the developer’s property abutted the city limits and was located in the ETJ. The court held that the developer was entitled to injunctive relief as a landowner under the Tex. Civ. Prac. & Rem. Code 65.015. Because the action was taken by the city without the abutting landowner’s consent, the action was void. The developer’s property touched the end of the public road and was in the ETJ. That was enough for him to be considered an abutting property owner by the Court.

The appellate court noted that the trial court took a lengthy recess and issued finding of facts and conclusions of law and granted a declaratory judgment and permanent injunction in favor of the developer. The trial was recessed on May 12, 1995 and reconvened September 22, 1997.

*Town of Palm Valley v. Johnson*

87 S.W.3d 110 (Tex. 2001)

The Supreme Court denied the petition requested by the Town but in an opinion “disapproved the statements in the court of appeal opinion” which held that an injunction may be granted under Tex. Civ. Prac. & Rem. Code Chpt. 65.001(1) without a showing of irreparable harm. The Supreme Court made it clear that the statute does not permit injunctive relief without the showing of irreparable harm otherwise required by equity. In this case developers (pro se) sued the Town of Palm Valley.

XIII. TRANSFER OF CITY’S INTEREST

Since the only title or interest in a street in which the city normally owns or holds is a public easement, that is the only title or interest in the street that the city can give up or release. This is true in all cases except those rare instances when the City owns the fee simple title in the street.

XIV. DISTINCTION BETWEEN ABANDONMENT OF THE STREET AND VACATING/CLOSING OF A STREET

While this may be a distinction without a difference, cities should clearly state what they are doing if they decide to close a street. If it is the city’s intention to vacate and close its easement in the street and convey that interest to the abutting land owners, it must be done so by ordinance and it must be clearly stated.

If however it is the city’s intention to merely close public access to the street but not abandon its public easement in the street and therefore not sell the property to the abutting land owners it must state so with clarity. *Texas Co. v Texarkana Machine Shops*, 1 S.W.2d 928 (Tex.Civ.App. – Texarkana 1928, no writ).
XV. PROCEDURE TO VACATE, CLOSE AND ABANDON THE CITY’S EASEMENT/FEED INTEREST IN THE STREET NAMED DESIRE

1. Checklist for City Staff for Street/Alleys closure
2. Application to Abandon Street
3. Ordinances: General Law and Home Rule
4. Notice of Closure
5. Quit Claim/Deed Without Warranty
6. Certificate of Compliance
FOR CITY STAFF
CHECKLIST FOR STREET/ALLEY CLOSURE

The following items/actions are necessary to process a request by landowners to close a street or alley:

_____ 1. Application of vacation of a street.

   The application must contain the following: a) petition with signatures of abutting property owners; b) title verification of ownership; c) detailed sketch of area requested to be closed; and d) name of contact person.

_____ 2. After receipt of the completed application, the city will notify the listed contact person by mail regarding the appraisal and survey costs and the administrative fee.

_____ 3. Within 20 days from the date of the written notice to the contact person, petitioner(s) must provide the City with appraisal and survey costs and administrative fee. These costs are non-refundable.

_____ 4. After the appraisal, the contact person will be notified by mail of the cost of right-of-way. The petitioner(s) will be given 15 days from the date of the notice to determine whether or not they wish to proceed with the closure and purchase the right-of-way. All property owners must give the City written notice of their decision to purchase the street or alley.

_____ 5. After the abutting property owners have agreed in writing and notified the City of their desire to proceed with the closure and sale of the street or alley, the City Council shall conduct a public hearing.


_____ 7. Council conducts the public hearing.

_____ 8. The landowners shall deliver a certified check to the City Manager for the appraisal cost of the right-of-way no later than 5 working days after the public hearing.

_____ 9. An ordinance authorizing the closure of the street shall be set for the Council agenda and must be passed and approved by the Council.

_____ 10. A certificate of compliance will be issued to the landowners noting the reservation of public utility easements.

_____ 11. Landowners must commit to the re-plat of the lots within 60 days of the sale.
APPLICATION FOR THE VACATION OF A PORTION OF
_________________, A PUBLIC (STREET)(ALLEY) IN THE CITY OF
__________________, TEXAS.

DATE: ______________________

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF ________________,
TEXAS:

We, the petitioner(s) hereby make application for the vacation, abandonment, and/or closure of a
portion of the above named street or alley. Exhibit No. 1 is a copy of the official petition of all of
the abutting property owners requesting said closure or abandonment.

We, the petitioner(s) agree to hold the City of ________________ harmless, and indemnify it
against all suits, costs, expenses, and damages that may arise or grow out of this request for
closure and abandonment.

Exhibit No. 2 is a plat or sketch (drawing) of the street or alley sought to be vacated and also
shows: a) the surrounding area to the nearest street in all directions; b) all of the abutting lots; c)
the blocks in the addition in which the above described portion of the street is situated; and d) the
record owners of each such lots.

By our signature(s) on the petition we agree to pay the costs of the appraisal, title search and
survey of the property and the administrative fee. We understand that without the payment of
such costs, the City will not proceed with appraisal of the street or alley we are requesting to be
abandoned and vacated. We also understand that these costs and fees are not refundable.

Exhibit No. 3 is copies of recorded deeds or a title check performed by a title company showing
current ownership of all property contiguous to the area proposed to be abandoned because:

[reason for requesting street closure/vacation]

The current street or alley has been and is being used as follows: _______________

Exhibit No. 4 is the consent of all public utilities to the vacation of the street or alley.
THE STATE OF TEXAS §
COUNTY OF TOM GREEN §

BEFORE ME, the undersigned authority, on this day personally appeared _______________ known to me to be a credible person and one of the signers of the foregoing application, and who, after being by me duly sworn, did upon (his)(her) oath state that the information contained in such application is true and correct to the best of (his)(her) knowledge and belief.

______________________________
Notary Public, State of Texas
EXHIBIT 1

PETITION FOR STREET OR ALLEY CLOSURE

The undersigned hereby petition for street or alley closure at __________________ between _____________ and ___________. I understand that the City Code provision on street or alley closures contains provisions for administrative fees and appraisal and survey costs to be paid by the petitioner(s) and I also understand that the City will not proceed with the appraisal or the closure unless all these funds are received by the City. I also understand that this fee and costs are not refundable.

After the City notifies the contact person of the appraisal and survey costs, and administrative fees, I understand that we will have 15 days to deliver these sums to the City. Failure to do so will result in the rejection of our petition. No petition signatures older than 6 months will be accepted.

By my signature, I am affirming that I own the property that abuts the street or alley that I am requesting be closed or abandoned.

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Who is the contact person for this request?

Name: ______________________
Address: ____________________
Phone: ______________________
AN ORDINANCE CLOSING, VACATING AND ABANDONING A PORTION OF __________________________ STREET IN THE CITY OF __________________________, TEXAS; PROVIDING FOR A PUBLIC HEARING; AUTHORIZING THE CITY MANAGER TO EXECUTE A QUIT CLAIM OR DEED WITHOUT WARRANTY; AND DIRECTING THAT THE PROCEEDS FROM THE SALE OF THE CITY’S INTEREST IN SAID STREET BE DEPOSITED IN THE STREET IMPROVEMENT FUND OF THE CITY.

WHEREAS, the City of ______________ is an incorporated municipality operating under the general laws of this State; and

WHEREAS, V.T.C.A, Transportation Code Section 311.008 authorizes any such city or town to vacate, abandon and close any street or alley upon a petition of all of the abutting owners on said street or alley; and

WHEREAS, _______________ (is the sole owner)(constitutes all of the abutting owners) on both sides of that certain (street)(alley) described as (__________ Street) lying and being situated (between Blocks _________ and __________) (OR IF IT BE AN ALLEY), lying and being situated in Block __________,) and being bounded on the (North, South, East, West) by _______________ Street, in said City, as more fully shown by the plat of record in Volume ____, Page ___, Plat Records of _______________ County, Texas.

WHEREAS, the said (owner has)(owners have) petitioned the City Council to vacate, abandon and close said street; and

WHEREAS, the City Council of the City of ________________, upon receipt of said petition, on the ___ day of ____________, 20____, appointed ____________, a licensed appraiser in Tom Green County, Texas, to appraise the value of the City’s interest in said (street)(alley), and the said appraiser reported to the City Manager that the value of the City’s interest in said (street)(alley) is $_________; and

WHEREAS, the abutting (owner has)(owners have) tendered (his) (her) (their) cashier’s check payable to the City of ______________ in the sum of $____________ to the City Manager; and

WHEREAS, the said City Council called a public hearing on the proposed closing of said (street)(alley) to be held in the Council chamber at the City Hall on the ___ day of ____________, 20__, of which due notice was given by publication one (1) time in the __________________________, a newspaper of general circulation in the City on the ___ day of ____________, 20__, and said public hearing was held on the day stated in said notice; and
WHEREAS, the said City Council finds and declares that it is in the best interest of all of
the citizens of the City of _____________ that said (street)(alley) be vacated, closed and
abandoned.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
___________________, TEXAS:

Section 1. All of that certain (street)(alley) described as (____________ Street) lying and
being situated (between Blocks ____ and _____) (OR IF IT BE AN ALLEY), lying and being
situated in Block ____,) and being bounded on the (North, South, East, West) by
______________ Street, in the City of _____________, as more fully shown by the plat of
record in Volume ___, Page ___, Plat Records of ______________ County, Texas, is
hereby abandoned, vacated and closed. A survey of the property to be abandoned is attached as
Exhibit “A.”

Section 2. Attached as Exhibit “B” to this ordinance is the application and petition by the
landowner(s) requesting abandonment, vacation and closure of said (street)(alley).

Section 3. A review has been made by the following City departments which have
approved the City abandonment/closure of this public right-of-way. Those departments include:
the Department of Public Works, the Department of Planning, the Police Department, the Fire
Department, the Legal Department, the City Manager and any other City department deemed
necessary by the City Council.

Section 4. The (owner)(owners) of the property abutting the portion of the (street)(alley)
abandoned, (has)(have) conveyed easements to the City to cover any public utility lines which
may already exist or that may hereafter be laid in the area in question in the future.

Section 5. Said portion of the (street)(alley) is not needed for public purposes and it
is in the public interest of the City of _____________ to abandon said described portion of
the (street)(alley). The abandonment provided for herein shall extend only to the public right,
title and easement in and to the tracts of lands described in this ordinance and shall be construed
only to that interest the governing body of the City of _____________ may legally and
lawfully abandon. There is hereby retained in the street right-of-way to be vacated, a permanent
easement for all public utilities and utility maintenance vehicles and equipment.

Section 6. The City Manager of the City of _____________ is hereby authorized and
directed to convey by Quit Claim or Deed Without Warranty all of the interest of the City of
___________________ in and to the said (street)(alley) described in Section 1 of this ordinance
save all present and future public utility easements to _____, the (owner)(owners) of
property abutting upon said (street)(alley) (IF THERE IS MORE THAN ONE OWNER, ADD
THE FOLLOWING: as their respective interests may appear, upon payment of the surveyor’s
fee). The consideration for said sale, heretofore received, shall be deposited in the street
maintenance fund, as required by Tex. Loc. Gov’t Code §253.001.
Section 7. Attached as Exhibit “C” to this ordinance is a copy of the appraisal performed on ___ day of _________________, 20____. The market value was determined to be $_____________. An administrative fee of $____________ has been paid for by the requesting landowner(s).

INTRODUCED on the ____ day of ____________, 2006, and finally PASSED, APPROVED and ADOPTED on this the ______ day of ________, 2006.

CITY OF _________________

ATTEST: __________________________
______________________, Mayor

______________________, City Clerk

20
AN ORDINANCE PROVIDING FOR THE ABANDONMENT, VACATION AND CLOSURE OF THE FOLLOWING STREET SEGMENTS, TO WIT: ____________________________

_____: PROVIDING FOR THE TERMS AND CONDITIONS OF ABANDONMENT, VACATION AND CLOSURE; AND PROVIDING FOR THE CITY MANAGER TO EXECUTE AND DELIVER A CERTIFICATE OF COMPLIANCE TO THE ABUTTING PROPERTY OWNER(S)

WHEREAS, the City Council of the City of _______, acting pursuant to law, deems it advisable to abandon, vacate and close the hereinafter described street segment and is of the opinion that said land is not needed for public use and therefore constitutes a public charge without corresponding benefit, and that same should be abandoned, vacated and closed as hereinafter provided; and

WHEREAS, the City Council of the City of _________ is of the opinion that the best interest and welfare of the public will be served by abandoning, vacating and closing same resulting in the vesting of title in the abutting property owner(s), subject to the conditions, requirements and restrictions contained herein; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _________:

1. That a portion of _________ Street located in ____________, ____________ County, Texas, shall be and the same is hereby abandoned, vacated and closed insofar as the right, title and easement of the public is concerned; subject, however, to the conditions, requirements and restrictions hereinafter more fully set out and which street segment is described more particularly in attached Exhibit “A” which is incorporated herein for all purposes.

2. That the abandonment, vacation and closure provided for herein is made and accepted subject to all present zoning and deed restrictions if the latter exist, and all easements, whether apparent or non-apparent, aerial, surface or underground.

3. That the abandonment, vacation and closure provided for herein shall extend only to the public right, title, easement and interest and shall be construed to extend only to that interest which the governing body for the City of ____________ may legally and lawfully abandon, vacate and close.

4. That the City Manager of the City of ____________ is hereby authorized to execute and deliver a Certificate of Compliance to the abutting owner(s) upon completion of all conditions and requirements set forth in this Ordinance.

5. That the abutting property owner(s) shall pay all costs associated with procedures necessitated by the request to abandon this street segment, plus compensation for the market value of the abandoned property.
6. The abandonment, vacation and closure shall be effective upon abutting owner(s) satisfying all conditions and requirements set forth in this Ordinance as evidenced by a Certificate of Completion executed by the City Manager.

INTRODUCED on the ___ day of ______________, 20___ and finally PASSED, APPROVED AND ADOPTED on this the ___ day of ______________, 20____.

THE CITY OF ______________________

By: __________________________
    ____________________, Mayor

ATTEST:

__________________________, City Clerk
NOTICE OF CLOSURE AND ABANDONMENT OF
__________________ (STREET)(ALLEY).

The City Council of the City of ________________, Texas, has received a petition from the
abutting property owners to close and abandon the (street)(alley) in the following:

[describe property and its location]

The area requested to be closed and/or abandoned is described in a diagram attached to this
notice (not to scale).

The City Council of the City of ________________, hereby gives notice that a public
hearing shall be held regarding said closure and invites the citizens of ________________ to
comment on the request by the abutting landowners to abandon, vacate and close this
(street)(alley). The public hearing shall be held as follows:

DATE
TIME
PLACE

The public is encouraged to attend and provide comments to the City Council.

__________________________
Date

__________________________
City Manager
City of ________________, Texas
QUIT CLAIM

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver’s license number.

That the City of ______________, a municipal corporation (“Grantor”), existing by and under the laws of the State of Texas, acting by and through its duly elected mayor, for and in consideration of One Dollar ($1.00) cash in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents RELEASE AND FOREVER QUIT CLAIM all of Grantor’s right, title and interest unto the owners of the property adjacent thereto (“Grantees”), in equal portions, to wit: the northern half of the hereinbelow described street right-of-way is hereby quitclaimed to the owner(s) of those lots abutting said northern half of the street right-of-way for the distance each lot abuts a portion of this abandoned right-of-way, and the southern half of the hereinbelow described street right-of-way is hereby quitclaimed to the owner(s) of those lots abutting said southern half of the street right-of-way for the distance each lots abuts a portion of this abandoned right-of-way, said conveyances being subject to all present zoning and deed restrictions, if the latter exist, and all easements, whether apparent or non-apparent, aerial, surface, underground or otherwise, all of the following tract of land situated in the city of ___________, ____________ County, Texas and described as follows (“Property”):

[PROPERTY DESCRIPTION]

Grantor shall have no right of title to the Property or any part thereof, except as granted by this deed to any abutting property owner(s) by virtue of this instrument; provided, however, said quit claim is subject to retention of all easements, whether apparent or non-apparent, aerial, surface, underground or otherwise extending to or encompassing all of the above-described property.

EXECUTED this _____ day of _________________, 20____.

THE CITY OF ________________

__________________________________________

_____________________, Mayor

ATTEST:

__________________________________________

_____________________, City Clerk
STATE OF TEXAS
COUNTY OF TOM GREEN

This instrument was acknowledged before me on ____________ by ____________, as Mayor for the City of ________________, a Texas municipal corporation, on behalf of said corporation.

______________________________
Notary Public, State of Texas
Deed without Warranty

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver’s license number.

Date:  

Grantor:  City of  

Grantor’s Mailing Address: [include county]  

Grantee:  Abutting Property Owner  

Grantee’s Mailing Address: [include county]  

Consideration: Ten and 00/100 Dollars and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged.

Property:  

PROPERTY DESCRIPTION  

Reservations from and Exceptions to Conveyance:  

All utility and drainage easements whether apparent or non-apparent, aerial, surface or underground.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee’s heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

When the context requires, singular nouns and pronouns include the plural.

City of  

__________________________, Mayor  

__________________________, City Clerk  

[Name of grantee]
This instrument was acknowledged before me on ______________ by ______________, as Mayor for the City of ______________, a Texas municipal corporation, on behalf of said corporation.

__________________________
Notary Public, State of Texas
CERTIFICATE OF COMPLIANCE WITH CONDITIONS AND TERMS OF
THE ORDINANCE VACATING, ABANDONING AND CLOSING
___________________ STREET IN ________________,
______________ COUNTY, TEXAS.

WHEREAS, on _____________, 20___, the City of _________________, adopted an
ordinance vacating, abandoning and closing _______________ Street provided that the abutting
property owners (“Owners”) complied with all conditions and terms of the ordinance; and

WHEREAS, the Owners have complied with the conditions and terms of said ordinance; and

WHEREAS, said ordinance authorizes the City Manager to execute a Certificate of
Compliance upon satisfaction of the terms and conditions of said ordinance; NOW
THEREFORE:

I, ______________________, City Manager of the City of __________________, certify that
the conditions and terms of the above described ordinance have been satisfied and completed.

City of ____________________

______________, City Manager

STATE OF TEXAS  §
COUNTY OF ______________ §

This instrument was acknowledged before me on the ____ day of ________________,
20___, by ____________________, as City Manager of the City of ________________, a Texas
municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Revised 11/07/2006