

Chapter 12.08

STREET AND ROAD VACATIONS

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12.08.010 Authority to vacate.

A. No county road or street shall be vacated and abandoned except by the unanimous vote of the board of county commissioners properly entered, or by operation of law, or by judgment of a court of competent jurisdiction.

B. When the board of county commissioners considers a county road or street or any part thereof as useless, and that the public would be benefited by its vacation and abandonment, said board, upon its own motion and by unanimous resolution entered upon its minutes, may declare its intention to vacate and abandon the same or any portion thereof. Upon the adoption of such resolution the board of county commissioners shall direct the county road engineer to report upon such vacation and abandonment, and such county road engineer shall make such report as provided in this chapter. (Ord. 3-69 §§ 1, 2, 1969)

12.08.020 Petition to vacate procedure—County residents.

A. Any person or persons residing in the vicinity of any county road or street or portion thereof the vacation or abandonment of which they may desire may petition the board of county commissioners to act as in 12.08.010. Such petition shall be in writing and signed under oath by the petitioners, and shall set forth the land owned by each petitioner by legal description, shall set forth the county road or street for which vacation and abandonment is sought by name and shall particularly describe the portion or portions thereof sought to be vacated. The petition shall further set forth that such county road or street, or the portion thereof sought to be vacated, is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. Such petition must be accompanied by a bond in the penal sum of one hundred dollars (\$100.00), payable to the county, executed by one or more of such petitioners as principal or principals, and two or more satisfactory sureties, and conditioned that the petitioners will pay into the county road fund of the county the amount of all costs and expenses incurred in the examination, report, and all other proceedings pertaining to such petition to vacate and abandon. In lieu of such bond such petition may be accompanied by cash payment in the sum of one hundred dollars (\$100.00) to the Franklin County treasurer, refund of which shall be conditioned upon payment by the petitioners of such costs and expenses.

B. Upon the filing of the petition and bond or cash in lieu thereof as provided in Section 12.08.010, the board of county commissioners may, but shall not be required to, proceed upon its own motion to take such action as in Section 12.08.010. (Ord. 3-69 §§ 3, 4, 1969)

12.08.030 Petition to vacate procedure—County freeholders.

Ten (10) freeholders residing in the vicinity of any county road or portion thereof may petition the board of county commissioners to vacate and abandon the same or any portion thereof. Such petition shall be in writing and signed by the petitioners, at least one of whom shall sign under oath, and shall show the land owned by each petitioner by legal description, shall set forth by name such county road or street for which vacation and abandonment is sought and shall particularly describe the portion or portions thereof sought to be vacated. Such petition shall further set forth that such county road or street, or portion thereof sought to be vacated, is useless as part of the county road system and that the public will be benefited by its vacation and abandonment. Such petition shall be accompanied by a bond in the penal sum of one hundred dollars (\$100.00), payable to the county, executed by one or more of such petitioners as principal or principals, and two or more satisfactory sureties, and condition that the petitioners will pay into the county road fund of the county the amount of all costs and expenses incurred in the examination, report, and all proceedings pertaining to such petition to vacate and abandon. In lieu of such bond, such petitioners may pay the sum of one hundred dollars (\$100.00) in cash to the Franklin County treasurer, refund of which shall be conditioned upon the payment by the petitioners of such costs and expenses. Upon the filing of such petition by ten (10) or more freeholders accompanied by the bond or cash deposit, the board of county commissioners shall direct the county road engineer to report upon such vacation or abandonment, and shall proceed by giving notice of and holding hearing upon such petition to abandon in the manner as provided in this chapter. (Ord. 3-69 § 5, 1969)

12.08.040 Road examination and report.

When directed by the board of county commissioners to report upon a proposed vacation and abandonment of a county road or street or portion thereof, the county road engineer shall examine such county road or street or portion thereof proposed to be vacated and abandoned, and report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board or which the board may specifically in writing direct. (Ord. 3-69 § 6, 1969)

12.08.050 Hearing for vacation.

Whenever the board of county commissioners has declared its intention to vacate and abandon any county road or street or portion thereof, or whenever a petition for the vacation or abandonment of any such county road or street or portion thereof has been filed by ten (10) or more freeholders as provided in this chapter, the board of county commissioners shall set a time and place for hearing upon the report for vacation and abandonment and shall cause to be published notice of such hearing. Such notice shall be published at least once a week for two consecutive weeks preceding the date

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fixed for the hearing in the county official newspaper and a copy thereof shall be posted for at least twenty (20) days preceding the date fixed for such hearing at each termini of the county road or street or portion thereof proposed to be vacated or abandoned. On the day fixed for the hearing the board of county commissioners shall proceed to consider the report of the engineer, together with any evidence for or objection against such proposed vacation and abandonment. If the county road or street is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the board may vacate the road or any portion thereof. (Ord. 3-69 § 7, 1969)

12.08.060 Cost bill for road examination and report.

At the time of filing his or her report with the board of county commissioners the county engineer shall also file his or her cost bill with the board setting forth all costs and expenses incurred by him or her in making such examination and report. If the board determines to vacate the road, it shall certify to the county treasurer all costs and expenses incurred in the proceedings, including the cost of publication and posting of notices. In the event such vacation proceedings were initiated by the petition or request of any freeholder or resident, such cost and expenses incurred shall be paid by such freeholder or resident, or the sureties upon the bond required in Sections 12.08.020 and 12.08.030. Upon certification or receipt of the treasurer that said costs and expenses have been so paid, the board of county commissioners shall declare the road, street or portion thereof vacated and enter its declaration in the board minutes. (Ord. 3-69 § 8, 1969)

12.08.070 Severability.

Should any section or portion of this chapter be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this chapter. (Ord. 3-69 § 9, 1969)