



## **CALIFORNIA STREETS AND HIGHWAYS CODE**

### **PART 3. PUBLIC STREETS, HIGHWAYS, AND SERVICE EASEMENTS VACATION LAW**

#### **CHAPTER 1. SHORT TITLE AND DEFINITIONS**

**8300.** This part may be cited as the Public Streets, Highways, and Service Easements Vacation Law.

**8301.** Unless the provision or context otherwise requires, the definitions in this chapter shall govern the construction of this part.

**8302.** "Adoption" of a resolution includes passage or enactment of a resolution.

**8303.** "Clerk" includes a person or officer who is the clerk of a legislative body.

**8304.** "Legislative body" means:

(a) In the case of a county or city and county, the board of supervisors.

(b) In the case of a city, the city council or other body which, by law, is the legislative body of the government of the city.

(c) In the case of the California Transportation Commission, the commission.

**8305.** "Local agency" means a county, city, or city and county.

**8305.5.** "Public entity" means a local agency or the California Transportation Commission.

**8306.** "Public service easement" includes all or part of, or any right in:

(a) A right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains drainage, canal, water transmission lines, light and air, and other limited use public easements other than for street or highway purposes.

(b) An easement or right of a type described in Section 8340.

**8306.5.** "Public utility" means a public utility as defined in Section 216 of the Public Utilities Code.

**8307.** "Resolution" includes an ordinance.

**8308.** "Street" and "highway" include all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway.

**8309.** "Vacation" means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.

#### **CHAPTER 2. GENERAL PROVISIONS**

**8310.** This part shall be liberally construed in order to effectuate its purposes.

**8311.** (a) The procedures provided in this part are alternative procedures for vacating streets, highways, and public service easements. The authority granted in this part is an alternative to any other authority provided by law to public entities.

(b) The provisions of this part shall not apply to or affect any other provision of this code. If proceedings are commenced under this part, the provisions of this part, and no other provisions of this code, shall apply to the proceedings.

- 8312.** Except as provided in Section 8315, a city legislative body may vacate, pursuant to this part, all or part of a street, highway, or public service easement within the city and a board of supervisors may vacate all or part of a street, highway, or public service easement within the county but outside a city.
- 8313.** (a) If the proposed vacation of a street, highway, or public service easement is within an area for which a general plan is adopted by a local agency, the legislative body of the public entity shall consider the general plan prior to vacating the street, highway, or public service easement.
- (b) The procedure prescribed in Section 65402 of the Government Code shall be followed if that section applies to the proposed vacation. If Section 65402 of the Government Code does not apply to the proposed vacation, the legislative body may submit the proposed vacation to the local planning commission or planning agency and give the commission or agency an opportunity to report upon the proposed vacation.
- 8314.** Section 892 applies to a street, highway, or public service easement vacated pursuant to this part.
- 8315.** A state highway may be vacated under this part only by the commission.
- 8316.** One or more streets, highways, and public service easements, whether or not contiguous, may be included and vacated in the same proceeding.
- 8317.** (a) Proof of publication of a notice shall be made by affidavit pursuant to the Code of Civil Procedure. Proof of the posting of a notice shall be made by affidavit of the person posting it, reciting the facts of the posting.
- (b) An officer required to have any notice published or posted shall file the affidavit in his or her office. Failure to do so does not invalidate proceedings under this part. An affidavit so filed is prima facie evidence of the facts stated in it.

### **CHAPTER 3. GENERAL VACATION PROCEDURE**

- 8320.** (a) The legislative body of a local agency may initiate a proceeding under this chapter in either of the following ways:
- (1) On its own initiative, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter.
  - (2) Upon a petition or request of an interested person, at the discretion of the legislative body, except as provided in subdivision (e) of Section 8321, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter.
- (b) The notices required by this chapter shall contain both of the following:
- (1) A description of the street, highway, or public service easement proposed to be vacated and a reference to a map or plan, that shows the portion or area to be vacated and includes a statement that the vacation proceeding is conducted under this chapter. In the case of a street or highway, the description shall include its general location, its lawful or official name, or the name by which it is commonly known, and the extent to which it is to be vacated. In the case of a public service easement, the description shall identify it with common certainty. The map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this paragraph.
  - (2) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall not be less than 15 days after the initiation of proceedings.
- 8321.** (a) Ten or more freeholders may petition the board of supervisors to vacate a street or highway under this chapter. At least two of the petitioners shall be residents of the road district in which some part of the street or highway proposed to be vacated is situated and shall be taxable therein for street or highway purposes.
- (b) Five or more freeholders may petition the board of supervisors to vacate a public service easement under this chapter. At least one of the petitioners shall be a resident of the township in which the public service easement proposed to be vacated is situated.
- (c) The residence address of each petitioner shall be set forth in the petition.
- (d) The board of supervisors may require the payment of a fee for filing a petition to defray the expenses of investigations, mailings, publications, and postings under this chapter.

(e) Upon the filing of a petition and the making of the deposit, if any, required under this section, the board of supervisors, by order, shall fix the date, hour, and place of the hearing on the petition. At least two weeks before the day set for the hearing, the clerk of the board shall mail a notice of the date, hour, and place of the hearing to each of the petitioners at the address set forth in the petition.

(f) Nothing in this section shall affect the right of a legislative body to initiate a proceeding under this chapter upon its own initiative, or upon petition or request of an interested person, or prevent the board of supervisors from vacating a street, highway, or public service easement without charging costs if the board determines it is in the public interest to do so.

**8322.** (a) Except as provided in subdivisions (b) and (c), notice of the hearing on the proposed vacation shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper published and circulated in the local agency conducting the proceeding and which is selected by the legislative body for that purpose or by the clerk or other officer responsible for the publication where the legislative body has not selected any newspaper for that purpose.

(b) If the proceeding is conducted by a city and there is no daily, semiweekly, or weekly newspaper published and circulated in the city, the notice shall be published in some newspaper published in the county in which the city is located.

(c) Notice need not be published under this section where there is no daily, semiweekly, or weekly newspaper published and circulating in the county in which the local agency conducting the proceeding is located.

**8323.** At least two weeks before the day set for the hearing, the legislative body shall post conspicuously notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices shall be posted not more than 300 feet apart, but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of another street or highway with the street, highway, or public service easement to be vacated and at one point approximately midway between each intersection, but at least three notices shall be posted.

**8324.** (a) At the hearing, the legislative body shall hear the evidence offered by persons interested.

(b) If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied.

**8325.** (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the recorder of the county in which the property is located. No fee shall be charged for recordation.

(b) Upon such recordation, the vacation is complete.

## **CHAPTER 4. SUMMARY VACATION**

### **Article 1. Authority**

**8330.** (a) The legislative body of a local agency may summarily vacate a street or highway that has been superseded by relocation.

(b) A street or highway shall not be summarily vacated pursuant to this section if vacation would do either of the following:

(1) Cut off all access to a person's property which, prior to relocation, adjoined the street or highway.

(2) Terminate a public service easement, unless the easement satisfies the requirements of Section 8333.

**8330.5.** (a) Subject to subdivisions (b) and (c), the commission may retain, relinquish to a local agency pursuant to Section 73, or summarily vacate a state highway that has been superseded by relocation.

(b) The commission shall not vacate a state highway unless the commission has first given a notice of relinquishment pursuant to Section 73 and the legislative body of the local agency has protested within the

prescribed 90-day period that the highway is not needed for public use and should be vacated by the commission.

(c) If vacation of a state highway would cut off all access to the property of any person which, prior to relocation, adjoined the highway, the commission shall either retain the highway or relinquish it pursuant to Section 73.

**8331.** The legislative body of a local agency may summarily vacate a street or highway if both of the following conditions exist:

(a) For a period of five consecutive years, the street or highway has been impassable for vehicular travel.

(b) No public money was expended for maintenance on the street or highway during such period.

**8332.** The legislative body of a local agency may summarily vacate a street or highway pursuant to an agreement entered into with the department pursuant to Section 100.2 to close the street or highway at or near the point of its interception with a state freeway.

**8333.** The legislative body of a local agency may summarily vacate a public service easement in any of the following cases:

(a) The easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation.

(b) The date of dedication or acquisition is less than five years, and more than one year, immediately preceding the proposed vacation, and the easement was not used continuously since that date.

(c) The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.

**8334.** The legislative body of a local agency may summarily vacate any of the following:

(a) An excess right-of-way of a street or highway not required for street or highway purposes.

(b) A portion of a street or highway that lies within property under one ownership and that does not continue through such ownership or end touching property of another.

**8334.5.** Notwithstanding any other provision of this article, a street, highway, or public service easement may not be summarily vacated if there are in-place public utility facilities that are in use and would be affected by the vacation.

## **Article 2. Procedure**

**8335.** (a) The legislative body may vacate a street, highway, or public service easement pursuant to the authority provided in this chapter by adopting a resolution of vacation.

(b) The resolution of vacation shall state all of the following:

(1) That the vacation is made under this chapter.

(2) The name or other designation of the street, highway, or public service easement and a precise description of the portion vacated. The description of the portion vacated may be by a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

(3) The facts under which the summary vacation is made. If the vacation is made pursuant to Section 8332, the statement shall include the date of the agreement. The resolution is prima facie evidence of the facts stated.

(4) That from and after the date the resolution is recorded, the street, highway, or public service easement vacated no longer constitutes a street, highway, or public service easement.

**8336.** (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the recorder of the county in which the property is located. No fee shall be charged for recordation.

(b) Upon such recordation, the vacation is complete.

## **CHAPTER 5. RESERVATION AND PRESERVATION OF EASEMENTS**

### **Article 1. Reservation of Easements**

**8340.** In a proceeding to vacate a street or highway:

(a) A public entity may reserve and except from the vacation the easement and right at any time, or from time to time, to construct, maintain, operate, replace, remove, and renew sanitary sewers and storm drains and appurtenant structures in, upon, over, and across a street or highway proposed to be vacated and, pursuant to any existing franchise or renewals thereof, or otherwise, to construct, maintain, operate, replace, remove, renew, and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures for the operation of gas pipelines, telegraphic and telephone lines, railroad lines, and for the transportation or distribution of electric energy, petroleum and its products, ammonia, and water, and for incidental purposes, including access to protect these works from all hazards in, upon, and over the street or highway proposed to be vacated.

(b) A local agency may reserve and except from vacation an easement for a future street or highway, unless the local agency finds that the street or highway is unnecessary for prospective public use.

(c) If there are in-place public utility facilities that are in use, a public entity shall, unless the legislative body determines the public convenience and necessity otherwise require, reserve, and except from the vacation any easement and right necessary to maintain, operate, replace, remove, or renew the public utility facilities.

(d) A public entity may reserve and except from the vacation, or may grant to another state or local public agency, an easement and right, at any time or from time to time, to construct, maintain, operate, replace, remove, and renew vehicular or nonvehicular trails for use by the public in, upon, over, and across a street or highway proposed to be vacated.

**8341.** (a) In a proceeding to vacate a street or highway, if the legislative body determines that the public convenience and necessity require the reservation and exception of easements and rights-of-way for works enumerated in Section 8340, such reservations and exceptions shall be recited in the resolution of vacation, in addition to any other matter required to be recited therein. The recital may describe the reservations and exceptions by reference to a precise map which is recorded or to which reference is made in the resolution and which is permanently maintained by the public entity.

(b) Subsequent proceedings of the public entity in relation to the vacation, including a deed or conveyance of title to or an interest in the property, are subject to, and governed by, the reservations and exceptions recited in the resolution of vacation and the deed or conveyance shall contain a recital to that effect.

### **Article 2. Preservation of Public Easements**

**8345.** As used in this article, "public body" means a city or special district as defined in Section 54775 of the Government Code.

**8346.** (a) A public body or public utility may request a local agency for notice of proceedings to vacate a street or highway.

(b) Every local agency shall maintain an index of requests for notice of vacation proceedings received pursuant to this section. The index shall be made available to the public upon request.

**8347.** If a public body or public utility has requested notice of the vacation proceeding under Section 8346, the local agency shall give written notice of the vacation proceeding to the public body or public utility within 10 days after:

(a) The adoption of a resolution of intention or the filing of a petition to vacate.

(b) The adoption of the resolution of vacation in cases not covered by subdivision (a).

**8348.** (a) Within 30 days after receipt of the notice of the vacation proceeding, the public body may:

(1) Determine that public convenience and necessity require a public easement to maintain, operate, replace, remove, or renew its existing works installed in the street or highway that is the subject of the vacation proceeding.

(2) File for record in the office of the recorder in the county in which the vacated street or highway is located, a verified notice of its public easement so determined over the street or highway, or part thereof, that is particularly described in the notice.

(b) Failure to record the notice of public easement within 30 days after receipt of the notice of the vacation proceeding extinguishes the right of the public body to a public easement.

(c) If the local agency fails to give the required notice of the vacation proceeding, the public body may determine and record notice of its public easement at any time within 180 days after recordation of the resolution of vacation. The failure of the public body to record its notice within the 180-day period extinguishes the right of the public body to a public easement over the vacated street or highway.

**8349.** Nothing in this article shall be construed to:

(a) Affect any reservation or the right to reserve easements pursuant to this chapter or any other provision of this code.

(b) Make the rights of the public in or to a street or highway subordinate to a public easement determined pursuant to this article.

## **CHAPTER 6. EFFECT OF VACATION**

### **Article 1. Effect on Property Rights**

**8350.** Except as provided in Chapter 5 (commencing with Section 8340), the vacation of a street, highway, or public service easement extinguishes all public easements therein.

**8351.** Except as otherwise provided in Chapter 5 (commencing with Section 8340) or in this chapter, upon the vacation of a street, highway, or public service easement:

(a) If the public entity owns only an easement for the street, highway, or public service purpose, title to the property previously subject to the easement is thereafter free from the easement for use for street, highway, or public service purposes, but not from any easement for vehicular or nonvehicular trail use that the public entity has previously granted to any other state or local public agency. If the easement is abandoned by resolution of the state or local public agency that was granted an easement for vehicular or nonvehicular trail use, the title to the property previously subject to the vehicular or nonvehicular easement is thereafter clear of the easement.

(b) If the public entity owns the title, the legislative body may dispose of the property as provided in this chapter.

**8352.** (a) Except as provided in Section 8353, vacation of a street, highway, or public service easement pursuant to this part does not affect a private easement or other right of a person (including, but not limited to, a public utility, the state, a public corporation, or a political subdivision, other than the local agency adopting the resolution of vacation) in, to, or over the lands subject to the street, highway, or public service easement, regardless of the manner in which the private easement or other right was acquired.

(b) A private easement or other right described in subdivision (a) is subject to extinguishment under the laws governing abandonment, adverse possession, waiver, and estoppel.

**8353.** (a) Except as provided in subdivision (b), the vacation of a street or highway extinguishes all private easements therein claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown, other than a private easement of ingress and egress to the lot from or to the street or highway.

(b) A private easement claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if, within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located.

(c) Nothing in this section shall be construed to create a private easement, nor to extend a private easement now recognized by law, nor to make the rights of the public in or to a street or highway subordinate to a private easement. Nothing in this section affects the right of the owner of property that was subject to the vacated street or highway to commence an action to quiet title as against any claim of a private easement of any type, whether before or after recordation of a verified notice pursuant to this section.

## **Article 2. Disposition of Excess Property**

**8355.** If the legislative body of a public entity determines that property previously subject to a street, highway, or public service easement, title to which is owned by the public entity, is no longer needed by the public:

(a) In the case of property owned by a local agency, the legislative body may sell or exchange the property in the manner, and upon the terms and conditions, approved by the legislative body.

(b) In the case of property owned by the state, the department shall dispose of the property as provided in Section 118.

**8356.** (a) Notwithstanding Section 8311, if a street or highway is vacated by a local agency under this part, or under any other law or under its charter, for the purpose of opening a new street or highway in lieu of that vacated, the legislative body of the local agency may, by resolution, unless otherwise provided in its charter, convey by deed its interest in the street or highway vacated to the owners of the lands adjacent to or fronting on the street or highway in such manner as it deems that equity requires.

(b) If title to the property occupied by the vacated street or highway is owned by the local agency, the legislative body may impose any reasonable conditions, or demand compensation by exchange of lands, or otherwise, before conveying the property.

(c) The deeds provided for in this section shall not be delivered to the grantees named in the deeds, until good and sufficient conveyances vesting in the local agency the title to the new street or highway opened in lieu of the street or highway vacated are delivered to the local agency.

(d) The authority granted in this section is permissive and does not affect any authority the local agency may have to hold the property for public use, dispose of the property by public bid, or take any other action with respect to the property authorized by law.

**8357.** The purchase price for any property sold by the legislative body of a local agency pursuant to this article shall be paid into the treasury of the local agency to the credit of any fund, available for the same purposes for which the property was used, that the legislative body designates.

## **CHAPTER 7. AGREEMENTS LIMITING VACATION**

**8360.** A local agency may, by written contract, agree with another local agency that a street or highway running from either of the local agencies to, in, through, or across any incorporated territory of the other local agency may only be closed or vacated by the other local agency upon the consent and agreement of both local agencies.

**8361.** A written agreement between any local agencies made and ratified prior to January 1, 1981, by the respective legislative bodies of both local agencies and providing against the closing of streets or highways described in Section 8360, except in accordance with the terms of the agreement, is hereby ratified and declared valid.

**8362.** Whenever a written agreement is made pursuant to Section 8360, or has been made and is ratified by Section 8361, each contracting local agency has a public interest in the continued opening and use of any street or highway provided for in the agreement. The legislative body of the local agency in which the street or highway is located, shall only have power to close or vacate the street or highway in accordance with the laws of this state and in accordance with the written agreement evidenced by an effective resolution carrying into effect the written agreement and passed by the legislative body of the other local agency.

**8363.** Every agreement between local agencies made in accordance with the provisions of this chapter shall be recorded in the office of the county recorder of each county wherein lies any of the property through or across which the street or highway runs which is to be or has been closed or vacated.