

CHAPTER 16: DEDICATION & VACATION OF EASEMENTS & RIGHT-OF-WAY

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16.00 INTRODUCTION

The purpose of this chapter is to explain the legal requirements for dedication of right-of-way and easements. The chapter also covers the approval process for such dedications and for vacation of easements and right-of-way.

16.01 ADMINISTRATION

General definitions and descriptions for various types of easements and rights-of-way are describes in the following sections. Methods of dedication and acceptance are also covered.

A. General Background:

1. Right-of-Way. Right-of-way is dedicated through either a statutory or common law process. Statutory dedication occurs through the platting process and results in a fee simple (ownership) interest in the public jurisdiction to which the right-of-way is dedicated. Common law dedication occurs through an ineffective platting process or through public use over a prolonged period of time. Common law of dedication of right-of-way results in an easement, not an ownership, interest on the part of the public jurisdiction to which the right-of-way is dedicated. This chapter covers only statutory dedication of right-of-way.
2. Easements. An easement is a right-of-use by a private party or by the public of a designated portion of private property for a limited purpose. When an easement is dedicated or granted, the owner retains the fee simple ownership while another party receives the right to use the specific area for a specific purpose which is described in the easement. Public easements are dedicated either to the “public” or to a specific governmental unit. Public easements are controlled by the governmental body that has jurisdiction over the land in question for the purpose designated in the easement. Easements are defined by how they are created, to whom they are dedicated, or how they are used. Each of these will be described.
 - a. Categorization by method of creation:
 - Prescriptive easements. Prescriptive easements are easements which have grown up as a result of use by either the public, or a specifically identifiable individual or group over at least twenty years. Prescriptive easements may be created, for example, when the public uses a path as a general means of access between two public areas. A prescriptive easement may be created when one neighbor uses a driveway across another neighbor’s property in order to access his buildings. Prescriptive easements, because of their nature, are not regulated or controlled by this chapter.
 - Express easements. Express easements are created by a written document. This can be designation on the face of a plat, together with dedication language in the Owner’s Certificate, or in a separate written document. The easement would designate the grantor (owner) and grantee (named private party or the public or the specified public entity), and specify the purpose or use of the easement. Some may be limited in time; others are perpetual.

b. Categorization by user:

- Public v. private easements. Public easements, public right-of-way, and public places are all terms used to describe land area that a governmental body has jurisdiction over. Within the City, unless right-of-way is a state, federal or county highway, the City has authority to control the use of "public" right-of-way or easements dedicated "to the public". This includes the authority to control the placement and relocation of utilities within these public easements. Some easements are granted to a specifically named unit of government. In that case, the unit of government has control over the use of such right-of-way or easement. Such easements cannot be accepted or vacated by the City. The City can declare that public easements are full and no additional utilities may be placed there. Additionally, the City may require that utilities be removed from these public places/easements. Private easements are dedicated to the use of a specifically named individual or entity. Usually, these are neighboring properties. Private easements, such as an ingress/egress easement, may be required by the City in the course of platting as a condition of a waiver from general subdivision regulations, or as a part of its authority to control street access.

c. Easements classified by purpose or use:

- Ingress/Egress Easement. This is a private easement guaranteeing the vehicular and pedestrian access rights to a designated area and access point to one or more private entities. This easement may be dedicated on the face of a plat or by separate easement document.
- Utility or General Utility Easement. This is a public easement that may be used by various public or privately-owned utilities. This type of easement is usually dedicated on the face of the plat, or by separate easement document. This utility easement, depending on the language of dedication in the plat or easement document, may be used for any purpose deemed a utility by the City, or may be limited to some specific kind of infrastructure. This kind of easement may be dedicated to a specific governmental unit other than the City such as a drainage district or the Urbana-Champaign Sanitary District, in which case control over the easement rests with that body alone.

Utility or General Utility Easements may include or not include, depending on language in the easement document, drainage and stormwater purposes. If the utility easement generically states that it is for any purpose deemed a utility in the City, the easement will cover sanitary sewer, storm sewer, general drainage and stormwater purposes together with other general public and private utilities such as potable water, gas, electric, and communications. These provisions can be superseded by specific easement language that is approved by the City.

- Private Utility Easement. This is an easement obtained by an individual utility company, whose use is restricted to that specific utility company, or its successors.
- Sanitary Sewer Easement. This is a utility easement limited to sanitary sewer use and is usually dedicated on the face of the plat or by separate

easement document. This easement may be dedicated to the public, in which case the City controls the easement or may be dedicated to Urbana-Champaign Sanitary District, in which case that unit of government controls the easement.

- Drainage or Stormwater Easement. This is a limited utility easement that is for the sole purpose of stormwater detention or overland drainage ways. This type of easement is usually dedicated on the face of the plat or by separate easement document. This easement may be dedicated to the public, in which case the City controls the easement or may be dedicated to a specific drainage district, in which case that unit of government controls the easement.

B. Dedication of an Easement or Right-of-Way: Dedication is a two (2)-step process. Step one involves the mapping, legal description, and transfer of rights as agreed to by the current owners of a property as part of a legal plat of property or by separate document. The second step is the public acceptance of the easement or right-of-way. The nature of the acceptance is dependent upon the nature of the dedication and use of the easement or right-of-way.

C. Right-of-Way.

1. Dedication. Right-of-way is designated on a plat and is dedicated in the Owner's Certificate. Property which is within the City must be specifically dedicated to the City of Champaign. Right-of-way located outside the City limits is dedicated "to the public".
2. Right-of-Way Acceptance. For land within the City, right-of-way acceptance involves approval of the plat by the City Council. If construction of infrastructure is required as part of the platting process, acceptance of the right-of-way is not complete until the infrastructure is "accepted" by the Public Works Department. For right-of-way located outside of the City at the time of plat approval, the procedures of the jurisdictional government (township, county, etc.) shall be followed.
3. Vacation of Right-of-Way. The City of Champaign can only vacate right-of-way that is located inside the City limits at the time of vacation. Vacation of right-of-way is governed by state statute (65 ILCS 5/11-91-1) and City municipal ordinance provisions. Please contact the City of Champaign Legal Department if right-of-way is to be vacated. Right-of-way located outside the City must follow the procedures of the jurisdictional unit which has authority over that right-of-way. The County can vacate County roads (605 ILCS 5/5-109); the Township can vacate Township roads (605 ILCS 5/6-301 et. seq.).

D. Easements.

1. Dedication. Easements may be designated on a plat and dedicated in the Owner's Certificate. All plats to be approved by the City of Champaign must dedicate public easements to the City of Champaign. State statute gives the City authority to accept easements within its mile and a half (1.5 mile) extraterritorial jurisdiction. (65 ILCS 5/11-105-1).
2. Easement Acceptance. Acceptance of an easement is shown by the City's approval of the plat or via administrative acceptance of separate easement documents.

3. Easement Vacation. The vacation of an easement is a request that an easement which has previously been dedicated and accepted such as with the recording of a plat, be legally removed due to utility reroute, non-use of the easement, or other reasons. The City can vacate only "public" easements dedicated to the City or to the public within the City. In general, the City vacates easements only when the utility companies or other affected governmental units have agreed to the release of the easement. In order to vacate a general utility easement, the City Engineer must receive written confirmation from all utility companies and other governmental units providing infrastructure at that location indicating no objection to the vacation. An easement may be vacated by a replat of the plat which originally dedicated the easement. A replat can vacate an easement within the City limits, or within the mile and a half (1.5 mile) extraterritorial jurisdiction. The City Manager may also vacate an easement that is within the City limits.

16.02 STANDARDS: APPROVAL PROCESS AND REQUIRED DOCUMENTATION FOR EASEMENT VACATION OR DEDICATION OUTSIDE OF THE PLATTING PROCESS (EASEMENTS THAT ARE NOT PART OF A FINAL PLAT)

- A. **General:** Previously, all easement dedications and vacations had to be approved by a vote of the City Council. In an effort to streamline the easement dedication/vacation process, Sections 2-119 and 30-2 of the Municipal Code were drafted. These regulations allow the City Manager to administratively accept and release easements within certain guidelines (see Attachment 16.01 - Municipal Code Section 30-2). The City Manager must report the administrative action to the City Council as an informative action. This process is limited to easements within the City limits.
- B. **Easement Dedication/Vacation Approval Process:** The surveyor of record shall submit a written request for acceptance/release of an easement by the City of Champaign together with an easement document, legal description, and plat of easement. Subsequently, the City Engineer shall prepare a Report to the City Council from the City Manager informing the Council of the administrative approval/acceptance/release of the easement.
- C. **Easement Dedication Document:** A written request for dedication of easement shall be submitted in writing to the City Engineer together with three (3) original signed Dedication of Easement documents. The easement dedication document shall be prepared using the template shown in Standard Attachment 16.02. Legal Description and Plat of Easement shall be attached as exhibits to the easement dedication document. A five (5)-inch blank space shall be left at the top of the first page of the easement document for use by the County Recorder. Any deviation from the language shown in the template document shall be approved by the City Attorney.
- D. **Legal Description of Easement:** A certified standard legal description prepared by an Illinois Registered Land Surveyor describing the limits of the easement(s) shall be submitted to the City Engineer for review.
- E. **Plat of Easement:** The Plat of Easement shall be a plan drawing of the legal description of the easement and the boundaries of the subdivision in which it lies and any adjacent subdivisions which clarify the purpose of the easement. See the example "Plat of Easement" as shown by Standard Attachment 16.04.

F. Release of Easement Document. A written request for release of easement/vacation shall be submitted in writing to the City Engineer together with three (3) original signed Release of Easement documents and written response from impacted outside agencies or utility companies. The release of easement document shall be prepared using the template shown in Standard Attachment 16.05. Legal description and Plat of Easement shall be attached as exhibits to the Release of Easement document. A five (5)-inch blank space shall be left at the top of the first page of the easement document for use by the County Recorder. Any deviation from the language shown in the template document shall be approved by the City Attorney.

G. Approval and Recording. The City Engineer shall review and recommend approval or rejection of the release/dedication of the easement. If the request is approved by the City Engineer, then the City Engineer shall prepare a Report to Council for approval of the request to be approved/signed by the City Manager (see Standard Attachments 16.06 and 16.07). After approval by the City Manager and delivery of Report to Council, the City Clerk shall distribute and record the documents as appropriate.

16.03 STANDARD ATTACHMENTS

Standard Attachment No. 16.01 - Municipal Code Sections 2-119 and 30-2

Standard Attachment No. 16.02 - Dedication of Easement Document Template

Standard Attachment No. 16.03 - Standard Legal Description

Standard Attachment No. 16.04 - Standard Plat of Easement (Example)

Standard Attachment No. 16.05 - Release of Easement Document Template

Standard Attachment No. 16.06 - Standard Easement Report to Council

Standard Attachment No. 16.07 - Standard Release of Easement Report to Council

Standard Attachment 16.01-- Municipal Code Sections 2-119 and 30-2

Sec. 2-119. Authority to release and accept easements and authority to accept the dedication of property for public purposes.

- (a) The City Manager is authorized to release and accept easements in accordance with section 30-2 of the Code.
- (b) The City Manager is authorized to accept the dedication of property for City purposes in accordance with section 30-2 of the Code.
(C.B. No. 92-344, § 2, 12-15-92)

Sec. 30-2. Release and acceptance of easements and property for street, sidewalk, public utility, drainage, sanitary sewer and other public purposes.

- (a) If the owner of property requests in writing the release of a City easement, the City Manager is authorized to release on behalf of the City any easement, including but not limited to an easement for public utilities, drainage, sanitary sewer or any single utility, if the City Manager finds, based on the written recommendation of the City Engineer, that:
 - (1) The easement is not needed to provide City service to any property; and
 - (2) No public utilities or City facilities are located or planned to be located in the area; and
 - (3) The easement is not necessary to any logical extension of public utility service, sanitary sewer service, drainage or other City services to any property in the future or an alternate and equally acceptable easement for such extension has been dedicated to the City.
- (b) If the property owner requests in writing that the City accept the dedication of an easement or property for street, sidewalk or a public way or for public utility, sanitary sewer, drainage or other public purposes, the City Manager is authorized to accept on behalf of the City such offer if the City Manager finds:
 - (1) The easement or property to be dedicated is within the City; and
 - (2) The easement or property to be dedicated may be necessary for the logical extension of public utility service, sanitary sewer or drainage purposes or public street, sidewalk or other public ways of the City in the future.
- (c) The City Manager shall accept or release easements and other property in accordance with this Section in writing in a form approved by the City Attorney. All such acceptances and releases should be accompanied by a drawing showing the location of the easement released or easement or property accepted.
- (d) The City Clerk shall record in the Recorder's Office for Champaign County any acceptance of the dedication of property or easement and any release of easement filed by the City Manager. The acceptance of an easement or dedication of property pursuant to this Section shall be effective upon its being recorded in the Recorder's Office. A release shall be effective pursuant to this Section on the date stated in the release, or if none, the date the City Manager executes the release. The City Clerk shall maintain the original of any such acceptance and distribute copies of the recorded release or acceptance to the City Engineer and the Planning Director.
- (e) The City Manager shall report to the City Council each decision accepting or releasing an easement or dedication of property to the City in accordance with this Section and the action on the request pursuant to this Section within three (3) months of the date the request is received in writing.
(C.B. No. 92-344, § 2, 12-15-92)

Standard Attachment 16.02—Dedication of Easement Document Template

[RECORDERS SPACE HERE]

PERMANENT EASEMENT
SANITARY SEWER IMPROVEMENT

THE GRANTOR(S), _____ [Owner] _____, of the City of Champaign, in the County of Champaign and State of Illinois, for and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, in hand paid, and the conditions and agreement hereinafter contained, hereby give, grant, and convey to the GRANTEE, the City of Champaign, Illinois, a municipal corporation, a perpetual easement, privilege, right and authority to erect, construct, install, and/or lay, and thereafter use, operate, inspect, repair, maintain, replace and remove a 8” sanitary sewer (hereafter improvement) over, and through the land of the GRANTOR(S), described as follows:

PART OF THE NE 1/4 OF SECTION 28, T. 19 N., R. 8 E. OF THE 3RD P.M., AS SHOWN ON ATTACHED EXHIBIT A, MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT A. All situated in the City of Champaign, County of Champaign, and State of Illinois, together with the right of ingress and egress over the adjacent lands of the GRANTOR(S) for the purposes of this easement.

In consideration of the grant of easement herein contained, the parties hereby agree to the following terms and conditions:

1. That the GRANTOR(S) shall retain all rights not herein granted, to the ownership, use and occupation of the above described easement area, except that the GRANTOR(S) shall place no permanent buildings or structures over the said improvement as finally constructed, nor deny or impair the GRANTEE access thereto for purposes of maintenance, repair or replacement thereof. During the period of construction or maintenance of said improvement, the GRANTEE shall have the exclusive use of the easement area for said construction or maintenance work.
2. That all materials or equipment used in the construction and/or maintenance of said improvement, and all surplus soil and debris excavated in the course thereof, may be transported to or from and be used and stored upon the site of said construction or maintenance work, on and across the easement area, and over the remainder of the GRANTOR(S)’s property immediately adjacent to the work being performed. GRANTOR shall not restrict GRANTEE’s access to the work.
3. That the GRANTEE, or its contractor, shall refill the excavations and restore the surfaces within the easement area to the approximate elevations and conditions existing at the place of construction before the commencement thereof and shall remove from the easement area all surplus soil and debris resulting from any such construction work and shall prepare such surface area for resod with grass except as provided herein. The GRANTOR(S) shall be responsible for the watering of the sodded area.

4. That the GRANTEE, or its contractor, shall refill the excavations so that the surface of the above described real estate shall be restored to the approximate elevations and conditions existing at the place of the construction before the easement thereof and shall remove from the easement area all surplus soil and debris soil and debris resulting from any such construction work and shall prepare such surface area for reseeding with grass. The GRANTEE, or its contractor, shall reseed and fertilize the area disturbed by the construction. The GRANTOR(S) shall be responsible for the watering of the seeded area. The "approximate elevation" shall be interpreted to mean such elevations as will provide drainage and usefulness comparable with that now existing.

5. That the GRANTOR(S) shall be privileged to remove small portable structures, sod, trees, bushes, shrubs and plants of any kind which are on any part of the easement area prior to the construction of the said improvements, it being understood that the GRANTEE may remove small portable structures, sod, tress, bushes, shrubs and plants of any kind which are on any part of the easement area, during the construction of the said improvements; and shall not be obligated to replace small portable structures, trees, bushes, shrubs and plants of any kind, or any portion of the easement area which may be removed or damaged, but that the GRANTEE will take reasonable measures for the protection of any shrubbery or trees which may be thereon.

6. Consideration herein shall be full payment for any damages to the GRANTOR's land, or successors and assigns, by reason of installation, operation and maintenance of the improvements referred to herein, and that this grant shall constitute a covenant which runs with the land, and shall be binding upon the heirs, executors, administrators, and assigned of the GRANTOR(S), and the terms and conditions herein above set forth shall be binding upon the GRANTOR(S), and the GRANTEE.

WITNESS our hands and seal this ___ day of ____ A.D., 199__.

_____ (SEAL)

_____ (SEAL)

STATE OF ILLINOIS }
 }ss.
COUNTY OF CHAMPAIGN }

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO
HEREBY CERTIFY, that

personally known to me to be the same person(s) whose name(s) is/are subscribed to the
foregoing instrument, appeared before me this day in person and acknowledged that he signed,
sealed and delivered the said instrument as his/her/their free and voluntary act, for the uses and
purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notarial Seal this ____ day of ____ A.D., 199__.

Notary Public

My commission expires: _____

CHAPTER 16: DEDICATION & VACATION OF EASEMENTS & RIGHT-OF-WAY

ACCEPTED: CITY OF CHAMPAIGN, ILLINOIS

By: _____
City Manager

Date: _____

ATTEST: _____
City Clerk

RETURN TO:
City Clerk
City of Champaign
102 N. Neil Street
Champaign, IL 61820

EASEMENT DOCUMENT PREPARED BY:
City of Champaign Engineering Division
702 Edgebrook Drive
Champaign, IL 61820

LEGAL DESCRIPTION PREPARED BY:

Standard Attachment 16.03—Standard Legal Description

**WESTERN STAR LODGE NO. 240
LEGAL DESCRIPTION**

A tract of ground being part of the Southwest Quarter of Section 24, Township 19 North, Range 8 East of the Third Principal Meridian, the Boundary of which is described as follows:

Beginning at a point in the South line of said Section 24, which is 1120.78 feet East of the Southwest Corner thereof, thence South $88^{\circ}, 35' 06''$ East along said South Line 341.48 feet to the West line of the parcel conveyed to Park 'n' Trade, Inc., the deed for which is recorded in Book 492 at page 339 in the Office of the Recorder of Champaign County, Illinois; Thence North $01^{\circ}, 24' 34''$ East, along said West line, 385.00 feet to an iron pin monument set in concrete; thence North $88^{\circ}, 35', 06''$ West 110.16 feet; thence North $67^{\circ}, 05' 20''$ West 64.49 feet; thence South $67^{\circ}, 05', 20''$ West 64.49 feet; thence North $88^{\circ}, 35', 06''$ West 111.64 feet to an iron pin monument set in concrete; thence South $01^{\circ}, 21', 42''$ West 385 feet to the point of beginning, situated in Champaign County, Illinois, encompassing 3.04 acres more or less also described as all of Masonic Subdivision in Champaign County, Illinois; and also a tract of land located in the Southeast Quarter of the Southwest Quarter of Section 24, Township 19 North Range 8 East of the Third Principal Meridian, Champaign County, Illinois, lying immediately north of and adjacent to Masonic Subdivision in Champaign County, Illinois, described as follows:

Commencing at the Northwest corner of Lot 4 of said Masonic Subdivision, thence North 10 feet; thence in an easterly direction along a line of 10 feet north of and parallel to the north line of said Masonic Subdivision to a point 10 feet north of the northeast corner of Lot 5 of said Masonic Subdivision; thence South 10 feet to said Northeast corner of said Lot 5, thence Westerly along the North line of said Masonic Subdivision to the point of beginning.

Standard Attachment 16.05—Release of Easement Document Template

[RECORDERS SPACE HERE]

RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that the City of Champaign, in the County of Champaign and State of Illinois, for said City and behalf of the public, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is herby confessed, does hereby release and vacate to _____ right, title and interest whatsoever that the City of Champaign, Illinois, for itself and on behalf of the public, may have in and to the Drainage and Public Utility Easement described on Exhibit "A" attached, was granted to the City by the instrument recorded in the Champaign County Recorder's office on _____ as Document No. _____, Book _____ of Plats, Page _____, also known as "_____".

Dated this _____ day of _____, _____

CITY OF CHAMPAIGN, ILLINOIS

By: _____
City Manager

ATTEST: _____
City Clerk

STATE OF ILLINOIS }
 }ss.
COUNTY OF CHAMPAIGN }

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY, that _____ and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said City, for the uses and purposes therein set forth, and that they were duly authorized to execute the same by the City Council of the City of Champaign, Illinois.

Given under my hand and Notarial Seal this _____ day of _____ A.D., _____.

Notary Public

My commission expires: _____

RETURN TO:
City Clerk
City of Champaign
102 N. Neil Street
Champaign, IL 61820

EASEMENT DOCUMENT PREPARED BY:
City of Champaign Engineering Division
702 Edgebrook Drive
Champaign, IL 61820

LEGAL DESCRIPTION PREPARED BY:

Standard Attachment 16.06—Standard Easement Report to Council

REPORT TO CITY COUNCIL

FROM: Steven C. Carter, City Manager
DATE: November 6, 1998
SUBJECT: REPORT OF REQUEST TO ACCEPT AN EASEMENT

A. Introduction: This reports the action taken by the City Manager on a request to accept the dedication of easement. Should you have any questions regarding this, please contact the City Engineer.

B. Requested Action: Acceptance of a sanitary sewer easement located _____.

C. Entity Making Request: _____, property owner.

D. Reason for Request: This City sewer is outside of the platted area for the subdivision and therefore was not recorded with the plat for the subdivision.

E. City Engineer's Recommendation: The request is consistent with Section 30-2 of the Champaign Municipal Code. The City Engineer recommends approval and the acceptance of the sanitary sewer easement.

F. Action Taken: Easement accepted on _____.

Prepared by: _____ Reviewed by: _____

Assistant City Engineer City Engineer

SW/jc

Attachments: Easement Document
 Legal Description
 Easement Plat

Standard Attachment 16.07—Standard Release of Easement Report to Council

REPORT TO CITY COUNCIL

FROM: Steven C. Carter, City Manager

DATE: November 6, 1998

SUBJECT: REPORT OF REQUEST TO RELEASE (OR VACATE) AN EASEMENT

A. Introduction: This reports the action taken by the City Manager on a request to accept the dedication of easement. Should you have any questions regarding this, please contact the City Engineer.

B. Requested Action: Vacation of utility and drainage easement located _____.

C. Entity Making Request: _____, property owner.

D. Reason for Request: _____.

E. City Engineer's Recommendation: The request is consistent with Section 30-2 of the Champaign Municipal Code. No existing or proposed utilities occupy or will occupy the utility and drainage easement. All utility companies have provided written approval to vacate the utility and drainage easement. Engineering staff has evaluated the utility and drainage easement and determined that it is not necessary. The City Engineer recommends vacation of the utility and drainage easement.

F. Action Taken: Easement will be vacated as provided by the change of Municipal Code.

Prepared by:

Reviewed by:

Assistant City Engineer

Public Works Director

Attachments: Easement Document
Legal Description
Easement Plat