

**CHAPTER 40-39**  
**OPENING AND VACATING STREETS, ALLEYS, AND PUBLIC PLACES**

**40-39-01. Survey, plat, and estimate made by city engineer.**

Whenever the governing body of a municipality shall deem it necessary to open, lay out, widen, or enlarge any street, alley, or public place within the municipality, it shall cause an accurate survey and plat to be made by the city engineer, county surveyor, or other competent civil engineer, with an estimate of the probable cost of the improvement. Such engineer or surveyor shall file the survey, plat, and estimate in the office of the city auditor and shall retain an office copy.

**40-39-02. Taking private property by purchase or eminent domain - Special assessments levied - Limitation on general tax.**

If it is necessary to take private property in order to open, lay out, widen, or enlarge any street or alley in any incorporated municipality, it shall be done by purchase or, subject to chapter 32-15, by the exercise of the right of eminent domain. When property is purchased or a judgment for damages is entered for property taken for any such improvement, the governing body shall certify the purchase or judgment to the special assessment commission, which shall levy special assessments upon the property benefited to pay such judgment or the purchase price. Not more than three-fourths of the purchase price or judgment may be paid by the levy of a general tax upon all the taxable property in a city.

**40-39-03. Grades of streets, alleys, and sidewalks - Established - Record - Changing - Liability.**

The governing body, by ordinance, may establish the grade of all streets, alleys, and sidewalks in the municipality as the convenience of its inhabitants may require. A record of the grades, together with a profile thereof, shall be kept in the office of the city engineer, or of the city auditor, if the city has no engineer. If the municipality changes the grade of any street after it has been established, it shall be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements made by them to conform to the grade as first established.

**40-39-04. Vacation of streets and alleys where sewers, water mains, pipes, and lines located - Conditions.**

No public grounds, streets, alleys, or parts thereof over, under, or through which have been constructed, lengthwise, any sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines, of the municipality or the municipality's grantees of the right of way therefor, may be vacated unless the sewers, mains, pipes, or lines have been abandoned and are not in use, or unless the grantee consents thereto, or unless perpetual easements for the maintenance of the sewers, water mains, gas, or other pipes, or telephone, electric, or cable television lines have been given. Any vacation of areas within which are located electric facilities, whether underground or aboveground, is subject to the continued right of location of such electric facilities in the vacated areas.

**40-39-05. Petition for vacation of streets, alleys, or public grounds - Contents - Verification.**

No public grounds, streets, alleys, or parts thereof within a municipality shall be vacated or discontinued by the governing body except on a petition signed by all of the owners of the property adjoining the plat to be vacated. Such petition shall set forth the facts and reasons for such vacation, shall be accompanied by a plat of such public grounds, streets, or alleys proposed to be vacated, and shall be verified by the oath of at least one petitioner.

**40-39-06. Petition filed with city auditor - Notice published - Contents of notice.**

If the governing body finds that the petition for vacation is in proper form and contains the requisite signatures, and if it deems it expedient to consider such petition, it shall order the

petition to be filed with the city auditor who shall give notice by publication in the official newspaper of the municipality at least once each week for four weeks. The notice shall state that a petition has been filed and the object thereof, and that it will be heard and considered by the governing body or a committee thereof on a certain specified day which shall be not less than thirty days after the first publication of the notice.

**40-39-07. Hearing on petition - Passage of resolution declaring vacation by governing body.**

The governing body, or such committee as may be appointed by it, shall investigate and consider the matter set forth in the petition specified in section 40-39-05 and, at the time and place specified in the notice, shall hear the testimony and evidence of persons interested. After hearing the testimony and evidence or upon the report of the committee favoring the granting of the petition, the governing body, by a resolution passed by a two-thirds vote of all its members, may declare the public grounds, streets, alleys, or highways described in the petition vacated upon such terms and conditions as it shall deem just and reasonable.

**40-39-08. Resolution to be published, filed, and recorded - Effect.**

Before the resolution declaring the vacation of a public ground, street, or alley shall go into effect, it shall be published as in the case of ordinances. A transcript of the resolution, duly certified by the city auditor, shall be filed for record and duly recorded in the office of the recorder of the county in which the municipality is situated, and such resolution thereafter shall have the effect of conveying to the abutting property owners all of the right, title, and interest of the municipality to the property vacated.

**40-39-09. Expenses for vacating streets, alleys, and public ways - Deposit required.**

All expenses incurred in vacating any public grounds, street, or alley shall be paid by the petitioners, who shall deposit with the city auditor such sum as may be necessary before any such expense is incurred. The amount to be deposited shall be determined by the governing body, and any part thereof not used for such expenses shall be returned.

**40-39-10. Aggrieved person may appeal to district court.**

Any person aggrieved by the decision of the governing body granting the vacation of any public grounds, street, or alley, within fifteen days after the publication of the resolution, may appeal to the district court of the county in accordance with the procedure provided in section 28-34-01. The judgment of the court therein is final.