



**REQUEST FOR COMMISSION ACTION**  
**CITY OF INDEPENDENCE**  
**April 25, 2019**

Department Administration

Director Approval Kelly Passauer

**AGENDA ITEM:** Consider setting a public hearing for May 23, 2019 at 5:30 PM to consider vacating an east/west alley connecting to Earl Street between Cedar Street and Coffeyville Avenue. A utility easement would remain for the vacated alley.

**SUMMARY RECOMMENDATION:** Set the hearing.

**BACKGROUND:** City staff has received a request from Octavian Castorena and Erin Trimble to vacate an unimproved alley adjoining their property. When an alley is vacated the property lines of the adjoining property shift to the center of the previously platted alley. There are utilities located in this alley, therefore, staff is recommending that a utility easement remain which means that the vacated alley could not have any permanent structures built over it. The alley is an east/west unimproved alley south of Cedar Street and north of Coffeyville Avenue, starting at Earl Street going approximately 650' east and ending at an improved north/south alley connecting East Cedar Street and Coffeyville Avenue located approximately 140' west and running parallel to South Cement Street.

An aerial of the alley is shown below:



The City Attorney suggests scheduling a public hearing prior to taking formal action on this vacation request.

**BUDGET IMPACT:** The budget impact would be any publication costs and filing fees for the alley vacation.

**SUGGESTED MOTION:** I move to set a public hearing for May 23, 2019 at 5:30 PM to consider vacating an east/west alley connecting to Earl Street between Cedar Street and Coffeyville Avenue, with a utility easement remaining for the vacated alley.

**SUPPORTING DOCUMENTS:**

1. Request from Octavian Castorena and Erin Trimble
2. Public Hearing Notice
3. Memo from the City Attorney

Received 4/8/2019 KP

To whom it may concern,

We are writing this letter to request to vacate the alley between Coffeyville Ave. and Cedar St. We own the properties on both sides, Aanippe Park Add. lots 75, 76, 77, 78 and the of 97, 98, 99, 100. We are wanting to build a garage on the vacant lots be hind the home of 1024 Coffeyville Ave.

Sincerely,

Octavian Castorena  
Erin Trimble

Handwritten signatures of Octavian Castorena and Erin Trimble. The signature of Octavian Castorena is written in black ink and is positioned above the signature of Erin Trimble. Both signatures are cursive and somewhat stylized.

City of Independence, Kansas

## NOTICE TO THE PUBLIC

The Independence, Kansas, City Commission will conduct a public hearing on:

Thursday, May 23, 2019, at 5:30 p.m.

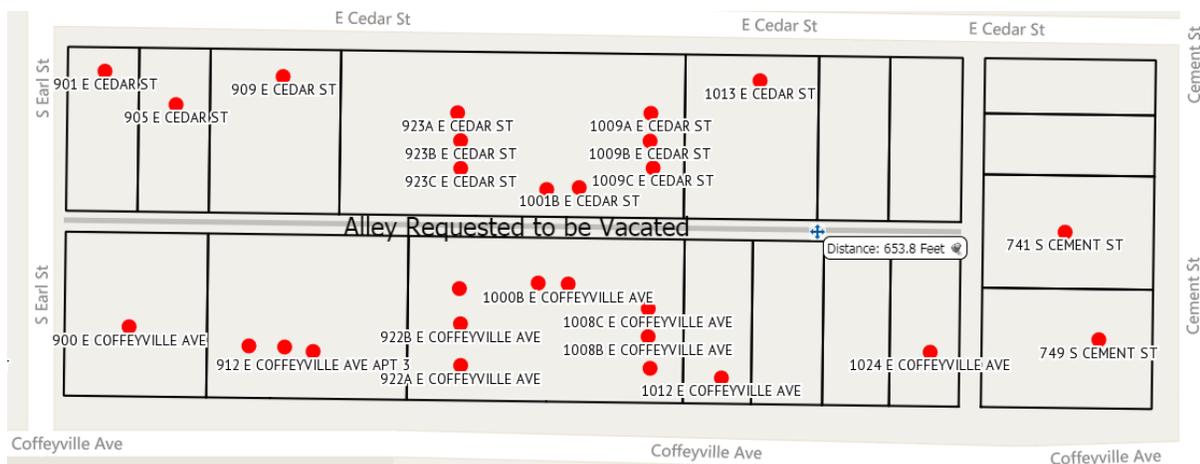
to consider vacating an east/west alley connecting to Earl Street between Cedar Street and Coffeyville Avenue.  
A utility easement would remain for the vacated alley.

The hearing pertains to the following location:

### Common Description:

An east/west unimproved alley south of Cedar Street and north of Coffeyville Avenue, starting at Earl Street going approximately 650' east and ending at an improved north/south alley connecting East Cedar Street and Coffeyville Avenue located approximately 140' west and running parallel to South Cement Street.

### Map of Alley:



### Requestor(s):

Octavian Castorena  
Erin Trimble

The hearing will be conducted in the Veterans Room, Memorial Hall, Penn/Locust, Independence, Kansas, and will begin at 5:30 p.m. All interested persons should attend, and they will be heard. Persons wishing to comment, but who cannot attend these hearings, should provide their written comments to:

David Schwenker, City Clerk/Treasurer  
811 W. Laurel Street  
Independence, KS 67301  
(620) 332-2500

Information regarding this request is available at City Hall. If special accommodation is required, please inform the City Clerk/Treasurer.

*David Schwenker, City Clerk/Treasurer*

# Informational Memorandum

**FROM THE DESK OF:**

JEFF CHUBB  
ATTORNEY AT LAW  
EMERT CHUBB REYNOLDS, LLC  
204 E. LAUREL - P. O. BOX 747  
INDEPENDENCE, KS 67301-0747  
E-MAIL: jchubb@sehclaw.com  
(620) 331-1800  
FAX: (620) 331-1807

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**TO:** Kelly Passauer  
**FROM:** Jeff Chubb  
**DATE:** April 17, 2019  
**RE:** RCA - Vacation of Alley

There are 2 separate statutory scenarios applicable to vacating alleys in Independence. Independence is a 2nd class city. One set, KSA 14-423 and 14-423a, applies to 2nd class cities only. The second set, KSA 12-504 and 12-505, applies to all classes of cities. The general rule of statutory construction followed by courts is that "specific controls over general". This means that if there is a statute applicable only to 2nd class cities, but there's also a statute on the same subject applicable to all classes of cities, the result would be that we would use the statute applicable to 2nd class cities because it is specific to 2nd class cities.

In our present case, as a precaution, I called Eric Smith with the LKM and ran this by him. He hedged. He said he generally recommended trying to follow both statutes. In this case, that's not possible because of conflicting requirements. Here's what the statutes say:

KSA 14-423 and 14-423a:

- do NOT require any advance notice of hearing;
- requires that the vacating of an alley "be reasonable";
- if vacated, the ordinance is published and becomes effective 30 days after publication;
- if within that 30 day window an "interested party" files a protest, then the governing body must hold a hearing and re-decide the issue;
- the governing body can reaffirm the ordinance, or set aside the ordinance.

KSA 12-504 and 12-505:

- requires 20 days advance publication notice;
- requires the governing body to make specific findings:
- that publication notice was properly given;
- that no "private rights" will be injured or endangered by the vacation;
- that the public will suffer no loss or inconvenience thereby;
- and here's the kicker....if a written objection to the petition is filed at or prior to the hearing by a property owner with adjoining land, the petition "shall NOT be granted".

I believe the chapter 14 statutes apply, but to be safe, I recommend following the chapter 12 publication notice requirement, and I further recommend that the governing body make the findings mentioned under chapter 12. By doing this, we are fully complying with the chapter 14 statutes, and we are adopting some "fairness" requirements found in the chapter 12 statutes.

JAC