

Evidence of publication, see Code of Civil Procedure
§§ 2010.2011.

Chapter 3

GENERAL VACATION PROCEDURE

Section	Section
8320. Initiation of proceeding; contents of notices.	6322. Notice of hearing; publication.
8321. Number of petitioners; contents of petition; filing fee; hearing, notice.	8323. Notices of vacation; posting.
	8321. Hearing; findings; adoption of resolution.
	8325. Recordation of resolution; effect.

Chapter 3 was added by Stats.1980, c. 1050, p. 3363, § 29.

§ 8320. Initiation of proceeding; contents of notices

(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 administrative 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 administrative, ly 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. c 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.

(Added by Stats.1980, c. 1050, p. 3363, § 29. & ended by Stats.1998, c. 876 (S.B.1649), § 20.)

Law Revision Commission Comments

1980 Addition

Subdivision (a) of Section 8320 indicates that a proceeding may be initiated by resolution. For initiating a proceeding upon petition, see Section 8321. Paragraphs (1) and (2) of subdivision (b) continue the substance of former Sections 956.8 (county highways) and 8321 (city streets) and former Government Code Section 50437 (public ser-

vice easements). The remainder of subdivision (b) and subdivision (c) continue the substance of the first portion of the first paragraph of former Section 8322 (city streets) and former Government Code Section 50433 (public service easements) and broadens them to include county highways. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1930 Legislation.

Former § 8320 was repealed by Stats.1980, c. 1050, p. 3363, § 28. See, now, § 8335.

1998 Legislation

Legislative findings, declaration and intent and short title of Stats.1998, c. 876 (S.B.1649), see Historical and Statutory Notes under Government Code § 1431.

Derivation: Former § 956.8, added by Stats.1941, c. 566, p. 1948, § L

Former § 958, added by Stats.1935, c. 29, p. 306. § 958, amended by Stats.1941, c. 566, p. 1948, § 2; Stats.1961, c. 1012, p. 2692, § 2.

Former § 8321, added by Stats.1941, c. 250, p. 1358, § 1, amended by Stats.1959, c. 624, p. 2605, § 1.

Additions or changes, indicated by underline; deletions by asterisks * * *

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Former § 8322, added by Stats.1941, c. 250, p. 1359, § 1, amended by Stats.1943, c. 426, p. 1961, § 1; Stats. 1949, c. 1190, p. 2110, § 1; Stats.1959, c. 624, p. 2605, § 2
Gov.C. former § 50441, added by Stats.1949, c. 81, p. 266, § 1.

Gov.C. former § 50438, added by Stats.1949, c. 81, p. 265, § 1, amended by Stats.1957, c. 875, p. 2086, § 1.
Stats.1943, c. 774, pp. 2554, 2555, §§ 17, 33.

§ 8321. Number of petitioners; contents of petition; filing fee; hearing; notice

(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 * * * 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.

(Added by Stats.1980, c. 1030, p. 3364, § 29. Amended by Stats.1981, c. 64, p. 121, § 1.)

Law Revision Commission Comments

1980 Addition

Subdivision (a) of Section 8321 continues the substance of former Section 957 (county highways). Subdivision (b) continues the substance of former Government Code Section 50439 (public service easements). Subdivision (c) is included to permit compliance with the mailing requirement of subdivision (e). Subdivisions (d) and (f) continue the substance of former Section 967.5 (county highways)

and broaden it to include public service easement+ The first sentence of subdivision (e) is drawn from provisions of former Section 958 (county highways) and former Government Code Section 50440 (public service easements). The second sentence of subdivision (e) is new. [15 Cal. L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes .

1980 Legislation.

Former § 8321 was repealed by Stats.1980, c. 1050, p. 3364, § 28. See, now, §§ 8320, 8335.

1981 Amendment. Rewrote subd. (d), which previously read:

"The board of supervisors may require the person filing the petition to deposit an amount reasonably sufficient to defray the expenses of investigations, mailings, publications, and postings under this chapter. The deposit shall be made with the county officer designated by the board.

Upon completion of the proceedings, any unused portion of the deposit shall be refunded to the person who filed the petition. If the costs exceed the deposit, the county shall bear the excess costs."

Derivation: Former § 957, enacted by Stats.1935, c. 29, p. 306, § 957.

Former § 957.5, added by Stats.1959, c. 1145, p. 3238, § 1.

Former § 958, added by Stats.1935, c. 29, p. 306, § 958, amended by Stats.1941, c. 566, p. 1948, § 2; Stats.1961, c. 1012, p. 2692, § 2.

Gov.C. former § 50439, added by Stats.1949, c. 81, p. 266.5 1.

Stats.1943, c. 774, p. 2555, § 32.

Pol.C. § 2697, added by Stats.1915, c. 683, p. 1333, § 1, amended by Stats.1917, c. 31, p. 24, § 1.

§ 8322. Notice of hearing. publication

(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.

Additions or changes indicated by underline; deletions by asterisks * * * .

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(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.

(Added by Stats.1980, c. 1050, p. 3364, § 29. Amended by Stats.1998, c. 876 (S.B.1649), § 21.)

Law Revision Commission Comment3

1980 Addition

Section 8322 is adapted from Section 5061 (The Improvement Act of 1911) and supersedes portions of former Section 958 (county highways) and Government Code

Section 50440 (public service easements) and broadens the publication requirement to include city streets. [15 Cal. L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1980 Legislation.

Former § 8322 was repealed by Stats.1980, c. 1050, p. 3364.5 28. See, now, §§ 8316, 8320, 8322, 3323.

1996 Legislation

Legislative findings, declaration and intent and short title of Stats.1996, c. 876 (S.B.1649), see Historical and Statutory Notes under Government Code § 1481.

Derivation: Former § 956, added by Stats.1935, c. 29, p. 306. § 958, amended by Stats.1941, c.66, p. 1943, § 4; Stats.1961, c.012, p. §692. 2

Former § 6322, added by Stats.1941, c. 250, p. 1359, § 1, amended by Stats.1943, c. 426, p. 1961.5 1; Stats. 1949, C. 1190, D. 2110, §1; Stats.1959, C. 624, p.2605, §2 Gov.C. former § 50440, added by Stats.1949, c. 81, p. 266, § 1.

Stats.1943, c. 774, p. 2555, § 33.

Notes of Decisions

In general

1

L. In general

Absent evidence that notice procedure for abandonment of alley was not complied with, it was presumed that clerk of county board of supervisors fully performed his duty of

giving notice to all freeholders in district by publication and posting for at least two successive weeks prior to date fixed for hearing as required by Str. & Hwy. C. § 956 and thus county effectively abandoned alleyway along which municipal utility waterline ran. *Kachadoorian v. Calwa County Water Dist.* (App. 5 Dist. 1979) 158 Cal.Rptr. 223, 96 Cal.App.3d 741.

§ 8323. Notices of vacation; posting-

• • • 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.

(Added by Stats.1980, c. 1050, p. 3365, § 29. Amended by Stats.1998, c. 876 (S.B.1649), § 22.)

Law Revision Commission Comments

1980 Addition

Section 8323 is based on and supersedes a portion of former Section 955 (county highways), a portion of the third sentence of former Section 958 (county highways), the last portion of the first paragraph of former Section

8322 (city streets), and former Government Code Section 50441 (public service easements). The last sentence of subdivision (c) is new. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1980 Legislation.

Former § 8323 was repealed by Stats.1980, c. 1050, p. 3365, § 28. See, now, § 8324.

1998 Legislation

Legislative findings, declaration and intent, and short title of Stats.1998, c. 676 (S.B.1649), see Historical and Statutory Notes under Government Code § 1461.

Additions or changes Indicated by underline; deletions by asterisks . * .

§ 8323

Derivation: Former § 955, enacted by Stats.1935, c. 29, p. 306, § 955, amended by Stats.1961, c. 1012, p. 2692, § 1.

Former § 958, added by Stats.1935, c. 29, p. 306, § 958, amended by Stats.1941, c. 566, p. 1948, § 2; SU.1961, c. 1012, p. 2692, § 2.

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Former § 8322, added by Stats.1941, c. 250, p. 1359, § 1, amended by Stats.1943, c. 426, p. 1961, § 1; Stats. 1949, c. 1190, p. 2110, § 1; Stats.1959, c. 624, p. 2605, § 2. Gov.C. former § 50441, added by Stats.1949, c. 81, p. 266, § 1. Stats.1943, c. 774, pp. 2554, 2555, §§ 17, 33.

§ 8324. Hearing; findings: adoption of resolution

(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 by 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.

(Added by Stats.1980, c. 1050, p. 3365, § 29. Amended by Stats.1998, c. 876 (S.B.1649), § 23.)

Law Revision Commission Comments

1980 Addition

Section 8324 continues the substance of the first two sentences of former Sections 966 (county highways), 969 (county highways), and 8323 (city-streets) and former Government Code Section 50442 (public service ease-

ments), with the addition of language to make clear that the legislative body may impose conditions for vacation. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1966 Legislation.

Former § 6324 was repealed by Stats.1980, c. 1050, p. 3365, § 28. See, now, §§ 8325, 8350, 8351.

1996 Legislation

Legislative findings, declaration and intent and short title of Stats.1998, c. 876 (S.B.1649), see Historical and Statutory Notes under Government Code § 1491.

Derivation: Former §§ 956, 959, enacted by Stats. 1935, c. 29, p. 306, §§ 956, 959.

Former § 5323, added by Stats.1941, c. 250, p. 559, § 1, amended by Stats.1959, c. 624, p. 2606, § 3.

Gov.C. former § 50442, added by Stats.1949, c. 81, p. 266, § 1.

Stats.1943, c. 774, pp. 2555, 2556, §§ 18, 34.

Pol.C. § 2639, added by Stats.1921, c. 886, p. 1681, § 2.

Pol.C. § 2643, added by Stats.1929, c. 576, p. 976, § 1.

Pol.C. § 2696, added by Stats.1915, c. 683, p. 1333, § 1.

Notes of Decisions

In general 1
Findings of fact 2
Review 3

1. In general

Order of board of supervisors for abandonment of portion of mapped subdivision mad was void where record failed to reveal any public benefit or interest in the abandonment of the portion of the right-of-way and there was no showing that abandoned portion was not necessary for prospective use. *Ratchford v. Sonoma County* (App. 1 Dist. 1972) 99 Cal.Rptr. 887, 22 Cal.App.3d 1056.

Evidence that portion of mapped subdivision road, which was offered for dedication to public use but never accepted, was not presently being used for passage of vehicles was insufficient to show that triangular portion of mapped road, upon which corner of a residence had been constructed, was unnecessary for prospective public use and evidence failed to show any public interest or benefit from abandonment, as distinguished from private gain to proponent of the abandonment. *Ratchford v. Sonoma County* (App. 1 Dist. 1972) 99 Cal.Rptr. 887, 22 Cal.App.3d 1056.

2. Findings of fact

Finding made by county board of supervisors that mad was "no longer necessary for public mad purposes" was sufficient under requirement of former statutory section governing abandonment order by county board of supervisors. *Heist v. Colusa County* (App. 3 Dist. 1934) 213 Cal.Rptr. 278, 163 Cal.App.3d 841.

Fact that, after abandonment of mad, persons owning property adjacent to mad would be responsible for maintenance, thus relieving county of that burden, was sufficient to rebut claim of fraud in county board of supervisor's determination to abandon mad. *Heist v. Colusa County* (App. 3 Dist. 1984) 213 Cal.Rptr. 278, 163 Cal.App.3d 841.

Where dominant concern of city council in considering vacation of public street was narrow and private rather than broad and public, in that primary benefit of vacation of such street would accrue to developers of shopping center, council's consideration of such subject was adjudicatory in nature despite any incidental public purpose and benefit, and resolution vacating street was therefore invalid for failure of city council to make findings of fact supporting such action. *City of Rancho Palos Verdes v. City Council of Rolling Hills Estates* (App. 1976) 129 Cal.Rptr. 173, 59 Cal.App.3d 869.

Additions or changes indicated by underline; deletions by asterisks

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3. Review

Since process of determination of public interest in vacating street does not involve legally required hearing at which evidence must be taken and discretion exercised in determining facts, process is of legislative rather than adjudicatory character; hence, judicial review is limited to examination of proceedings to determine whether action is arbitrary, capricious or entirely lacking in evidentiary support, or whether there has been failure to follow

procedure or give notice required by law. City of Rancho Palos Verdes v. City Council of Rolling Hills Estates (App. 1976) 129 Cal.Rptr. 173, 59 Cal.App.3d 869.

Record supported conclusion of city council that vacation of public street for purposes of allowing construction of proposed shopping center was action taken for public purpose. City of Rancho Palos Verdes v. City Council of Rolling Hills Estates (App. 1976) 1b Cal.Rptr. 173, 59 Cal.App.3d 969.

§ 8325. Recordation of resolution; effect

(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.

(Added by Stats.1980, c. 1030, p. 3365, § 29.)

Law Revision Commission Comments

1980 Addition

Subdivision (a) of Section 332.5 continues the substance of the third sentence of former Section 956 (county highways), the second sentence of former Section 966 (county highways), the second paragraph of former Section 3324 (city streets), and former Government Code Section 50445 (public service easements), and is comparable to Section 6336.

Subdivision (b) supersedes the portions of former Sections 960 (county highways) and 8324 (city streets) and former Government Code Section 50444 (public service easements) that gave effect to the vacation upon the making of an order or vacation. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

Derivation: Former § 956, enacted by Smts.1935, c. 29, p. 306, § 956.

Gov.C. former § 56445, added by Stats.1949, c. 81, p. 266, § 1.

Former § 1931, added by Skts.1969, c. 665, p. 1330, § 1.

Stats.1943, c. 774, pp. 2555, 2556, §§ 19, 35, 47.

Former § 8324, added by Stats.1941, c. 256, p. 1359, § 1.

Cross References

Contents of certificate, see Evidence We § 1531.

Similar provision, see Streets and Highways Code 98336.

Chapter 4

SUMMARY VACATION

Article

1. Authority
2. Procedure

Section

- 8330
- 8335

Chapter 4 was added by Stats.1980, c. 1050, p. 3366, § 29.

Article 1

AUTHORITY

Section

8330. Highway superseded by relocation; exceptions.
- 8330.5. State highway superseded by relocation; powers of commission; restrictions.
8331. Impassable street or highway.

Section

8332. Agreement with department.
8333. Public service easement; vacation.
8334. Excess right-of-way; dead end in proper

Additions or changes indicated -by underline; deletions by asterisks * * ●

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Section

8334.5. Public utility facilities; effect.

Article 1 was added by Stats.1980, c. 1050, p. 3366, § 29.

§ 8330. Highway superseded by relocation; exceptions

(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.

(Added by Stats.1980, c. 1050, p. 3366.9 29.)

Law Revision Commission Comments

1980 Addition

Section 8330 continues the substance of @division (a) of former Sect& 960.1 (county highways) and of former Section 930 (city streets). A public service easement

includes an easement or right of a type described in Se&on 8340. See Section 8306, [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1980 Legislation.
Former § 3330 was repealed by Stats.1980, c. 1050, p. 3366.928. See, now, § 8340.

Former § 1930, added by Stats.1969, c. 665, p. 1330,

Derivation: Former § 969.1, added by Stats.1941, c. 970, p. 2601. § 2.

Notes of Decisions

Construction and application 1

1. Construction and application

City could not declare public street vacated on basis that it had been superseded by relocation where such relocation was not existing fact, but there was merely plan for relocation of street in future. City of Rancho Palos Verdes v. City Council of Rolling Hills Estates (App. 1976) 129 Cal.Rptr. 173.69 Cal.App.3d 869.

Where county officials represented that, on relocation of roadway segment, county would not assert an interest in

the segment which was being relocated, where plaintiff subdividers, in reliance on such representation not only submitted revised subdivision map, but acquired property interests and constructed improvements which were incorporated into county mad system, and where the relocation became an "accomplished fact", county was equitably estopped from asserting ownership of the segment, notwithstanding fact that no formal proceedings for abandonment of the segment ever took place. Palo Alto Inv. Co. v. Placer County (App. 3 Dist. 1969) 74 Cal.Rptr. 331, 269 Cal.App.2d 363.

§ 8330.5. State highway superseded by relocation; powers of commission; restrictions

(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.

(Added by Stats.1980, c. 1050, p. 3366, § 29.)

Additions or changes indicated by underline; deletions by asterisks *

Law Revision Commission Comments

1980 Addition

Section 3330.6 continues the substance of the first sentence of former Sections 72 and 835 and adds the requirement that prior to vacation of a state highway superseded by relocation the California Transportation Commission must first offer to relinquish the highway to the appropriate local agency. The commission may vacate the highway only if the offer of relinquishment is rejected by the

local agency for the reason that the highway is not needed for public use and should be abandoned by the commission. The authority to vacate a state highway under this section includes authority to vacate a portion of the highway or any right or interest in the highway. See Section 8308 ("highway" defined). [15 Cal.L.Rev.Comm. Reports 1137(1980)]

Historical and Statutory Notes

Derivation: Former § 72, enacted by Stats.1935, c. 29, p. 251, § 72, amended by Stats.1935, c. 514, p. 1586; Stats.1959, c. 1799, p. 4280, § 1.
Former § 835, added by Stats.1936, c. 514, p. 1586.

Pol.C. § 363b, added by Stats.1921, c. 607, p. 1040, § 1, amended by Stats.1927, c. 252, p. 460.5 3; Stats.1929, c. 579, p. 977, § 1.

§ 8331. Impassable street or highway

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.

(Added by Stats.1980, c. 1050, p. 3366, § 29.)

Law Revision Commission Comments

1980 Addition

Section 3331 continues a provision formerly found in Section 954 that related to abandonment of unnecessary county highways and broadens the provision to include city streets. A county highway that is described in Sec-

tion 3331 may be designated a stock trail instead of being vacated. See Section 954. [15 Cal.L.Rev.Comm. Reports 1137(1980)]

Historical and Statutory Notes

1980 Legislation.
Former § 8331 was repealed by Stats.1980, c. 1050, p. 3366, § 23. see, now, § 8341.

Derivation: Gov.C. former § 50443, added by Stats. 1949, c. 81, p. 266, § 1.
Stats.1943, c. 774, p. 2556, §§ 46.46.

§ 8332. Agreement with department

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 intersection with a state freeway.

(Added by Stats.1980, c. 1050, p. 3366, § 29.)

Law Revision Commission Comments

1980 Addition

Section 3332 supersedes subdivision (a) of former Section 100.23 (city streets and county highways) and makes clear that the action of the local agency is to be taken pursuant to this part. Nothing in this section precludes

closure of a street or highway without vacation pursuant to Sections 100.2, 9412, and 1801. See Section 8311 and Comment thereto. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1980 Legislation.
Former § 8332, added by Stats.1978, c. 626, p. 1685, § 2, which authorized summary vacation and abandon-

ment of an easement reserved from the vacation of a street by adoption of an ordinance or resolution, was repealed by Stats.1980, c. 1050, p. 3362, § 28.

§ 8333. Public service easement; vacation

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

Additions or changes indicated by underline; deletions by asterisks * * *

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(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 and there are no other public facilities located within the easement.

(Added by Stats.1980, c. 1050, p. 3366, § 29. Amended by Stats.1983, c. 52, § 2.)

Law Revision Commission Comment.3

1980 Addition

Section 3333 continues the substance of the first paragraph of former Government Code Section 50443 (public service easements). [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

Derivation: Gov.C. former § 50443, added by Stats. 1949, c. 81, p. 266, § 1.

State.1943, c. 774, p. 2666, §§ 46.46.

§ 8334. Excess right-of-way; dead end in property of single owner

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.

(Added by Stats.1980, c. 1060, p. 3366, § 29.)

Law Revision Commission Comments

1980 Addition

Section 8334 continues the substance of subdivisions (b) and (c) of former Section 960.1 (county highways) and broadens them to include city streets, making clarifying changes. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

Derivation: Gov.C. former § 50443, added by Stats. 1949, c. 81, p. 266, § 1.

Stats.1943, c. 774, p. 2556, §§ 45, 46.

§ 8334.5. Public utility facilities: effect

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.

(Added by Stats.1980, c. 1050, p. 3367, § 29.)

Legislative Committee Comment-Assembly

1980 Addition

Section 3334.5 is new. If public utility facilities are in place, a public street, highway, or service easement may only be vacated pursuant to the standard procedures set forth in Chapter 3 (commencing with Section 8320). Vacation of a public street, highway, or service easement does not affect any private easement or other right acquired by a public utility for its facilities. See Section 8352. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Article 2

PROCEDURE

Section

8335. Resolution; adoption; contents.

8336. Recordation of resolution; effect

Additions or changes indicated by underline; deletions by asterisks

STREETS AND HIGHWAYS CODE

§ 8336

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Article 2 was added by Stats.1980, c. 1050, p. 3367, § 29.

§ 8335. Resolution; adoption; contents

(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.

(Added by Stats.1980, c. 1050, p. 3367, § 29.)

Law Revision Commission Comments

1980 Addition

Subdivision (a) of Section 3335 continues the substance of the second sentence of former Section 72 and the first sentence of former Section 336 (state highways), the first sentence of former Section 1931 (city streets), and the first sentence of former Section 960.2 (county highways), and broadens them to include public service easements. See also former Section 100.23(a) (city streets and county highways).

Subdivision (b) continues the substance of former Section 100.23(b) (city streets and county highways) and the second paragraph of former Government Code Section 50443 (public service easements). Paragraph (1) of subdivision (b) and the reference to a precise description by map in paragraph (2) are new. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

Derivation: Former § 72, enacted by Stats.1935, c. 29, § 251, § 72, amended by Stats.1935, c. 514, p. 1586; Stats.1959, c. 1799, p. 4280, § 1.

Former § 100.23, added by Stats.1978, c. 416, p. 1313, § 1.

Pol.C. § 363b, added by Stats.1921, c. 607, p. 1040, § 1, amended by Stats.1927, c. 252, p. 460, § 3; Stats.1929, c. 579, p. 977, § 1.

Former § 836, added by Stats.1935, c. 514, p. 1536.

Former § 1931, added by Stats.1969, c. 665, p. 1330, § 1.

Former § 8320, added by Stats.1941, c. 250, p. 1358, § 1.

Former § 3321, added by Stats.1941, c. 250, p. 1358, § 1, amended by Stats.1959, c. 624, p. 2605, § 1.

Cross References

Prima facie evidence, effect, see Evidence Code § 602.

§ 8336. Recordation of resolution; effect

(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.

(Added by Stats.1980, c. 1050, p. 3367, § 29.)

Law Revision Commission Comments

1980 Addition

Section 3336 continues the substance of the second and third sentences of former Section 836 and a portion of the second sentence of former Section 72 (state highways), the first sentence of former Section 100.23(e) (city streets and county highways), and the second, third, and fourth sentences of former Sections 960.2 (county highways) and 1931 (city streets) and broadens those provisions to include public service easements and makes revisions to conform the provisions to Section 8325. [15 Cal.L.Rev. Comm. Reports 1137 (1980)]

Additions or changes indicated by underline; deletions by asterisks *

§ 8336

STREETS AND HIGHWAYS CODE

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Historical and Statutory Notes

Derivation: Former § 72, enacted by Stats.1935, c. 29, p. 251, § 72, amended by Stats.1935, c. 514, p. 1566; Stats.1959, c. 1799, p. 4230, § 1.
Former § 636, added by Stats.1936, c. 514 p. 1586.
Former § 1931, added by Stats.1969, c. 665, p. 1330, § 1.

Pol.C. § 363b, added by Stats.1921, c. 607, p. 1040, § 1, amended by Stats.1927, c. 252, p. 460, § 3; Stats.1929, c. 579, p. 977, § 1.
Former § 960.2, added by Stats.1941, c. 970, p. 2601, § 3.

Cross References

Similar provision, see Streets and Highways Code § 3325.

Chapter 5

RESERVATION AND PRESERVATION OF EASEMENTS

Article

Section

1. Reservation of Easements	8.340
2. Preservation of Public Easements	8345

Chapter 5 was added by Stats.1980, c. 1050, p. 3367, § 29.

Article 1

RESERVATION OF EASEMENTS

Section

Section

8340. Scope of authorized reservations and exceptions from vacation.

8341. Recitation of reservations and exceptions.

Article 1 was added by Stats.1980, c. 1050, p. 3367, § 29.

§ 8340. Scope of authorized reservations and exceptions from vacation

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.

(Added by Stats.1980, c. 1050, p. 3367, § 29. Amended by Stats.1990, c. 248 (A.B.809), § 1.)

Additions or changes indicated by underline; deletions by asterisks ***

STREETS AND HIGHWAYS CODE

§ 8341

Legislative Committee Comment-Assembly
1980 Addition

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Subdivision (c) is new. It in effect creates a presumption in favor of a reservation of rights for public utility facilities in place. If the public entity vacating the street or highway does not plan to reserve rights for existing public utility facilities, it must make a specific determination that the public convenience and necessity requires

that the reservation not be made. Such a determination might be made, for example, where the entire area within which a vacated street is located is to be devoted to a use which would not be possible if the existing public utility facilities remained in place. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

1990 Legislation

The 1990 amendment added subd. (d) relating to vehicular and nonvehicular trails; and made a nonsubstantive change in subd. (a).

Derivation: Former § 725, added by Stats.1979, c. 1799, p. 4280, § 2

Former § 336, added by Stats.1959, c. 1799, p. 4282, § 4.

Former § 960.2, added by Stats.1941, c. 970, p. 2601, 9.3.

Former § 1934, added by Stats.1969, c. 665, p. 1330, § 1.

Former § 8330, added by Stats.1943, c. 427, p. 1962 § 1.

Civ.C. former § 8125, added by Stats.1974, c. 1340, p. 2913, § 1.

Cross References

Vacation as extinguishment of public easements, exception under this chapter. see Streets and Highways Code § 8350.

§ 8341. Recitation of reservations and exceptions

(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.

(Added by Stats.1980, c. 1050, p. 3368, § 29.)

Law Revision Commission Comments

1980 Addition

Section 3341 continues the substance of former Section 3331, broadens it to include county and state highways, and substitutes the requirement that the reservations and exceptions be recited in the resolution of vacation for the requirement that they be recited in the resolution of

intention. The provisions for describing the reserved easements by reference to a map and requiring that deeds or conveyances recite any reserved easements are new. [15 Cal.L.Rev.Comm. Reports 1137 (1980)]

Historical and Statutory Notes

Derivation: Former § 8331, added by Stats.1943, c. 427, p. 1962, § 1, amended by Stats.1959, c. 624, p. 2606, § 4.

Civ.C. for & § 812.5, added by Stats.1974, c. 1340, p. 2913, § 1.

Article 2

PRESERVATION OF PUBLIC EASEMENTS

Section

8345. Public body.
8346. Requests for notice; index.
8347. Written notice; time.

Section

8348. Determination of necessity; recording notice of public easement; extinguishment.
8349. Construction.

Additions or changes indicated by underline; deletions by asterisks *.