

ORDINANCE NO. 2018-

AN ORDINANCE AMENDING CHAPTER 98, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF LEAGUE CITY ENTITLED, "ABANDONMENT OF PUBLIC ROW OR EASEMENTS AND SALE OR EXCHANGE OF LAND AND OTHER REAL PROPERTY INTERESTS"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, as follows:

Section 1. That the Code of Ordinances is hereby amended to AMEND Chapter 98, Article IV to read as follows:

ARTICLE IV. - ABANDONMENT OF PUBLIC RIGHTS-OF-WAY OR EASEMENTS AND SALE OR EXCHANGE OF LAND AND OTHER REAL PROPERTY INTERESTS

Sec. 98-116. - Application generally.

Any abutting property owner seeking the consent of the city council to abandon, vacate or close any public right-of-way or easement (or portion thereof), including, but not limited to streets, avenues, alleys, drainage rights-of-way or easements, or other municipal or public easement with the city limits, shall file a written application with the city secretary requesting that public right-of-way or easement (or portion thereof) be abandoned, vacated and closed. Such public right-of-way or easement (or portion thereof) sought to be abandoned, vacated and closed shall be defined in the application. All persons owning any property abutting such public right-of-way or easement (or portion thereof), shall join in such application. Such application shall include the following information that may be in the form of attachments to the application:

- (1) A statement by the applicant(s) of the reason for the request.
- (2) A boundary survey drawing with legal description, prepared by a registered professional land surveyor, duly registered in the State of Texas, showing the public right-of-way or easement (or portion thereof) sought to be abandoned, vacated and closed. Drawn to a scale of not less than one-inch equals 50 feet, the drawing shall include the area, both in square footage and in acreage of the public right-of-way or easement (or portion thereof) sought to be abandoned. The director of public works, or his or her designee, may waive this requirement when, in his or her sole determination, a recorded plat contains sufficient evidence to determine the legal description and area of property to be abandoned, vacated and closed.
- (3) An opinion letter by an attorney duly licensed by the State of Texas; stating that the applicant owns fee simple title to the underlying property encumbered by the public right-of-way or easement (or portion thereof) or to the property abutting and contiguous with the public right-of-way or easement (or portion thereof) sought to be abandoned.

- (4) A cashier's or certified check, payable to the City of League City, in payment of the application fee established by this article.
- (5) A statement, in a form prescribed by the city attorney, waiving any personal claims for damages against the city and further agreeing to defend, save and hold harmless the city from any other claims that may arise against the city in abandoning, vacating and closing any public right-of-way or easement (or portion thereof), under this article.
- (6) A letter of no objection from the following Franchised Utilities: Center Pointe, Comcast Cable, Frontier, and Texas New Mexico Power. The City shall have the right to require additional letters of no objection from other parties if it deems necessary for the application.

Sec. 98-117. - Application fee.

- (a) An application fee in the amount of \$3,250.00 shall be required for each application to abandon, vacate and close each separate public right-of-way or easement (or portion thereof), within the city limits. A cashier's or certified check, payable to the city for such amount, shall accompany such application, and no portion of such fee shall be refundable, regardless of the final action on such application, by the city council.
- (b) The application fee of \$3,250.00 shall be a minimum fee only. In the event that the appraisals' fee is greater than \$3,000, or City Council finds that the administrative overhead to the city for processing such application would exceed the \$3,500, the city shall have the right to require an additional fee to cover said coverage to process such application.
- (c) A governmental entity having the power to eminent domain shall be exempt from the payment of an application fee under this section.

Sec. 98-118. - Recommendations of the city attorney and the director of Engineering required.

Upon the filing of a fully completed application with the supporting documents required by this article, the city secretary shall promptly refer such application to the city attorney and the director of Engineering, each of whom shall examine the application and thereupon deliver his or her written recommendations concerning legal and engineering aspects, respectively, of such application to the city council. The director of Engineering, in making such recommendations, shall give due consideration to: the present use or nonuse of the public right-of-way or easement (or portion thereof) sought to be closed; traffic and drainage patterns in the area; proximity of other public right-of-way or easements (or portions thereof); major and minor thoroughfares in the area; the city's master plans; the effect of the proposed abandonment on access by fire and other emergency vehicles, and other city service vehicles, to adjacent properties; the location of existing city water and sewer lines and storm water facilities and future extensions thereto which may be impacted by the abandonment, vacating or closing of such public right-of-way or easement (or portion thereof).

Sec. 98-120. - Determination by city council is final.

Upon compliance with all provisions of this article, the city council shall make a final determination to either grant or deny the request to abandon, vacate and close the public right-of-way or easement (or portion thereof) described in the application filed under this article.

Sec. 98-121. - Sale of park land, municipal building site, or abandoned roadway, general.

- (a) Except as provided by subsection (b) of this section, the city may sell and convey land or an interest in land that the city owns, holds, or claims as a public square, park, or site for the city hall or other municipal building or that is an abandoned part of a street or alley. A sale under this provision may include the improvements on the property.
- (b) Land owned, held, or claimed as a public square or park may not be sold unless the issue of the sale is submitted to the qualified voters of the City of League City at an election and is approved by a majority of the votes received at the election; provided, however, that this provision shall not apply to the sale of land or right-of-way for drainage purposes to a district, county, or a corporation acting on behalf of a county or district.
- (c) To affect the sale of such land or interest in land provided for in subsection (a) of this section, city council shall adopt an ordinance directing the mayor to execute the conveyance.
- (d) The proceeds of the sale may be used only to acquire and improve property for the purposes for which the sold property or interest in property was used. Failure to so use the proceeds, however, does not impair the title to the property or interest in property acquired by purchaser for a valuable consideration.

Sec. 98-122. - Notice of sale or exchange, exceptions to notice of sale or exchange.

Except for the types of land and property interests covered by section 98-124 of this article, before city-owned land may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in the county in which the land is located. The notice must include a description of the land, including its location and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day of the second publication.

Sec. 98-123. - Appraisal and fair market value.

City owned land and real property interests in land may not be conveyed, sold or exchanged for less than the fair market value of the land or interest, unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value of the city-owned land or other real property interest shall be determined by an appraisal obtained by the city, which appraisal shall be deemed conclusive. The cost of any streets, utilities, or other improvements constructed on the affected land or to be constructed on the affected land by an entity other than the city, may be considered in determining the fair market value. In the case of appraisals of right-of-way and easements, the issue of ownership of the underlying fee simple shall be considered.

Sec. 98-124. - Exceptions to notice and bidding requirements for sale or exchange.

The notice and bidding requirements provided under section 98-122 of this article do not apply to the following types of city-owned land or real property interests:

- (1) Narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinance;
- (2) Streets or alleys, owned in fee or used by easement;
- (3) All types of rights-of-way or easements for which the abutting property owners also own the underlying fee simple title;
- (4) Land or a real property interest originally acquired for the purpose of streets, rights-of-way or easements, which the city chooses to trade or exchange for other land to be used for streets, rights-of-way, easements, or other public purposes, including transaction partly for case;
- (5) City-owned land that the city wants to have developed by contract with an independent foundation;
- (6) A real property interest conveyed to a governmental entity that has the power of eminent domain; or
- (7) City-owned land that is located in a reinvestment zone designated as provided by law and which the city desires to have developed under a project plan adopted by the city of the zone.

Sec. 98-125. - Sale of specific types of real property interests.

The land or interests described in section 98-124(1), (2) and (3), may be sold to abutting owners in the same subdivision if the land has been subdivided; or to abutting owners in proportion to their abutting ownership, and the division between owners shall be made in an equitable manner.

In the case of those types of real property interest described under section 98-124(2) and (3), when the appraisal is for city-owned interests in public rights-of-way or easements for which an application for abandonment, vacation or closure has been submitted in accordance with the terms of an integral part of the adjoining or abutting tracts of land, and as if the city held 75 percent ownership of such tract in fee. In the case where the city will retain an easement within the described tract (under section 98-124(2) and (3)) being sold, the price for the area of the retained easement will be discounted 50 percent from the appraised value.

Sec. 98-126. - General disclaimer.

City council is not required to accept any offer or to complete any sale or exchange.

Secs. 98-127—98-150. - Reserved.

Section 2. Savings. All rights and remedies which have accrued in favor of the City under this Ordinance and amendments thereto shall be and are preserved for the benefit of the City.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise

unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Repealer. All ordinances and parts of ordinances in conflict herewith are hereby repealed but only to the extent of such conflict.

Section 5. Codification. It is the intent of the City Council of the City of League City, Texas, that the provisions of this Ordinance shall be codified in the City's official Code of Ordinances as provided hereinabove.

Section 6. Publication and Effective Date. The City Secretary shall cause this Ordinance, or its caption, to be published in the official newspaper of the City of League City, upon passage of such Ordinance. The Ordinance shall become effective ten (10) days after its passage.

PASSED first reading the ____ day of _____, 2018.

PASSED second reading the ____ day of _____, 2018.

PASSED AND ADOPTED the ____ day of _____, 2018.

PAT HALLISEY
Mayor

ATTEST:

DIANA STAPP
City Secretary

APPROVED AS TO FORM:

NGHIEM V. DOAN
City Attorney