

ORDINANCE NO. 146

AN ORDINANCE ADOPTING RULES AND REGULATIONS FOR THE VACATION OF RIGHT-OF-WAY WITHIN THE MUNICIPAL LIMITS OF THE TOWN OF CLINT

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CLINT:

1. APPLICATION BY PROPERTY OWNER

A property owner whose property contains or abuts a right-of-way located within the City Limits of the Town of Clint, may apply to the Town for a vacation, in whole or in part, of the public right-of-way. An application for Vacation of Public Right-of-Way, a copy of which is found in the Appendix, accompanied by the following information, shall be submitted to the Town Clerk.

- A. A non-refundable processing fee as approved by City Council of the Town of Clint;
- B. A written consent or concurrence of all persons who own property abutting the right-of-way proposed to be vacated.
- C. Copies of recorded deeds showing current ownership of all properties containing or abutting the public right-of-way proposed to be vacated;
- D. Three (3) official copies of the survey of the area requested for vacation, showing all abutting property boundaries, improvements (noting whether such improvements are to be removed or are to remain), drainage structures, dimensions, and other easements or right of-way contained on the property. The survey must be prepared (and sealed) by a Professional Land Surveyor registered in the State of Texas and shall contain the following:
 - 1. illustrate the existing and proposed drainage patterns, conditions and what will be modified and shall provide drainage easement(s) for any existing active underground drainage pipe and drop inlet(s) located within the property and for surface drainage flow of storm water crossing the subject property;
 - 2. provide flood zone designation and illustrate flood zone encroachments, if any;
 - 3. metes and bounds description of the property to be vacated and calculations showing the area in square feet; and
 - 4. a location map at a scale of one inch equals six hundred feet which provides identification of the proposed vacation in relation to features such as local streets, arterial streets, school and other features, on a separate 8 ½ x 11 sheet.
- E. One (1) copy of the subdivision plat or instrument by which the right-of-way was dedicated, showing the recording information.

2. REVIEW FOR APPLICATION COMPLETENESS

The Town Clerk shall, upon receipt of an Application for Vacation of Right-of-Ways, review the application to determine whether or not the application meets all of the content requirements for submittal. An application not meeting all of the submission requirements of the Title shall be returned to the property owner within ten (10) working days following the date of acceptance for review of application completeness, indicating the information which is lacking on the application. If an application accepted for review of application completeness is not returned to the property owner within the ten (10) working day review period, the application shall be deemed accepted.

3. PROCEDURE AND PUBLIC HEARING NOTICE

A. Procedure

Upon acceptance of an Application for Vacation of a Right-of-Way, the Town Clerk shall distribute the application for public easement or right-of-way vacation to the City departments, as applicable. Written comments and recommendations on the application for public easement or right-of-way vacation shall be submitted by the City to the Planning and Zoning Commission within two (2) weeks from the date of distribution. All objections to the application shall be submitted in writing. Comments and recommendations not submitted or received within the specified time period shall result in the comments not being considered by the Planning and Zoning Commission, and shall require that the affected party's late comments and recommendations be presented directly to the City Council.

The City staff shall present the Application for Vacation of Right-of-Ways to the Planning and Zoning Commission who shall recommend approval, approval with modifications of disapproval, subject to any written comments and recommendations. The recommendation(s) of the Planning and Zoning Commission, accompanied with an explanation of their recommendation(s), shall be presented to the City Council.

A copy of these recommendations shall be provided to the property owners making the application at least three (3) working days prior to the City Council hearing.

Upon a favorable recommendation from the City Council on the Application for Vacation of Right-of-Way, the Town Clerk shall forward the information to the City Attorney for preparation of the vacation ordinance and for securing the necessary appraisal. Upon completion of establishing the market value of the public right-of-way, the Town Clerk shall forward the request to the City Council for finalization.

B. Public Hearing Notice

1. Right-of-Way Vacation

a. Planning and Zoning Commission Hearing. Letters giving notice of the Planning and Zoning Commission public hearing shall be mailed by the Town Clerk to all property owners:

- (1) Abutting the public right-of-way proposed to be vacated; and
- (2) Within the block contiguous to the public right-of-way proposed to be vacated.

Notice shall be given at least ten (10) days prior to the public hearing. Property ownership information shall be taken from the last available and approved ad valorem tax roll of the City.

Further, the City Clerk shall place a legal notice in the official newspaper (or as otherwise permitted by law) providing information of the public hearing before the Planning and Zoning Commission on the public right-of-way proposed to be vacated. Notice shall appear in the newspaper then (10) days prior to the public hearing date.

b. City Council Hearing. Letters giving notice of the City Council public hearing shall be mailed by the Town Clerk to all property owners:

- (1) Abutting the public right-of-way proposed to be vacated; and
- (2) Within the block contiguous to the public right-of-way proposed to be vacated.

Notice shall be given at least ten (10) days prior to the public hearing. Property ownership information shall be taken from the last available and approved ad valorem tax roll of the City.

Further, the City Clerk shall place a legal notice in the official newspaper providing information of the public hearing before the City Council on the public right-of-way proposed to be vacated. Notice shall appear in the newspaper ten (10) days prior to the public hearing date.

4. APPEAL OF CITY PLANNING AND ZONING COMMISSION DENIAL

When the City Planning and Zoning Commission denies an Application for Vacation of Right-of-Way, no vacation ordinance shall be prepared and submitted to the City Council for finalization. The applicant may, in writing, request an appeal to City Council by placing an item on the agenda at a regularly scheduled City Council meeting. The applicant's appeal must be made in the office of the Town Clerk within fifteen (15) days of the denial by the City Planning and Zoning Commission. The City Council may deny the appeal for vacation of the public easement or right-of-way or may direct the preparation of the vacation ordinance.

5. APPRAISAL REQUIRED FOR VACATION OF PUBLIC RIGHT-OF-WAY

A. General

When required by state law, an appraisal shall be made of public right-of-way for which an application for vacation has been submitted. The applicant shall pay for all appraisal fees incurred by the Town of Clint. The appraisal shall be requested to determine the market value of the Town's interest in the public right-of-way. The cost of the appraisal will be reimbursed to the Town of Clint by the applicant whether or not the application is finally approved by the City Council. The applicant shall submit a check payable to the Town of Clint for all appraisal fees before the application is forwarded to the City Council for finalization.

No appraisal shall be required for an application for vacation of a public easement. The market value of the Town's interest in the public easement is deemed to be zero.

B. Date of Valuation

The date for establishing the market value of the public right-of-way proposed to be vacated shall be the date the application is accepted by the City Engineer.

C. Cases of Disputed Value

If the first appraisal obtained by the Town of Clint is disputed by the application, the applicant shall obtain a second independent appraisal at the applicant's expense. The Town of Clint must agree on the qualification of the second independent appraiser before the appraisal is requested by the applicant. If the City Attorney determines that there is a substantial difference between the two appraisals, the Town of Clint will contact a third independent appraiser to perform a review appraisal, the cost of which shall be paid by the applicant. The City Council shall then make a final determination of the market value which shall be binding on all parties.

6. FEES TO BE PAID BY APPLICANT

A. Application Fee

Before the City Council authorizes the vacation of all or part of a public easement or right-of-way, the applicant shall pay a non-refundable application fee as established by City Council.

B. Vacation Fee for Public Right-of-Way

In addition to the application fee, the applicant shall pay the following:

1. The cost of the appraisal;
2. The appraised market value of the Town's interest in the public right-of-way;
3. The applicant shall pay for all attorney fees incurred by the Town of Clint; and
4. The applicant shall pay for all engineering fees incurred by the Town of Clint.

C. Publication Cost

The applicant shall be responsible for all costs for publishing notices related to the Applicant for Vacation of Public Easements or Right-of-Ways when it is presented before the City Council for finalization. These costs shall be due upon receipt of billing from the City.

7. RESUBMISSION OF A VACATION APPLICATION

No application for Vacation of Public Easements or Right-of-Ways shall be resubmitted within a twelve (12) month period from the date of final action by the City Planning and Zoning Commission or the City Council, whichever action occurs last.

8. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

9. SEVERABILITY CLAUSE

That if any section, subsection, paragraph, clause, phrase, or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or provision thereof, other than the part so decided to be invalid or unconstitutional.

10. SAVINGS CLAUSE

That all previous budget ordinances shall remain in full force and effect, save and except as amended by this Ordinance.

11. EFFECTIVE DATE

The necessity for making and approving a budget for the fiscal year, as required by the laws of the State of Texas, requires that this Ordinance shall take effect immediately from and after its passage, as the law in such case provides.

12. PROPER NOTICE & MEETING


It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 9 day of November 2016 by a vote of 5 (ayes) to 0 (nays) to 0 (absent/abstentions) of the Town Council of Clint, Texas. (The record vote is on file in the minutes of the Town of Clint.)


TOWN OF CLINT, TEXAS:

by: 
Charles Gonzalez, Mayor

ATTEST:


Susana Rodriguez, Town Clerk

APPROVED AS TO FORM:


Bertha A. Ontiveros, Assistant City Attorney

First reading 10/12/2016
Second reading 11/9/2016