

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 3, "BUILDING REGULATIONS", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 3, "Building Regulations", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 34 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2005.

APPROVED:

RON SILVIA, Mayor

ATTEST:

Connie Hooks, City Secretary

APPROVED:

Carla A. Robinson

City Attorney

EXHIBIT “A”

That Chapter 3, “Building Regulations”, Section 2. “Right-of-way Maintenance” of the Code of Ordinances of the City of College Station, Texas, is hereby amended by adding a new paragraph “N. Right-of-Way and Easement Abandonment” to read as follows.

“N. RIGHT-OF-WAY AND EASEMENT ABANDONMENT”

(1) **Criteria.**

- (a) The City Council of the City of College Station, at the request of one or more underlying fee simple or abutting property owners, or upon the City’s own initiative, may, after holding a public hearing, abandon an easement or right-of-way only upon affirmative findings regarding the following criteria:
 - (i) That the abandonment will not result in property that does not have access to public roadways or utilities.
 - (ii) That there is no current public need or use for the easement or right-of-way.
 - (iii) That there is no anticipated future public need or use for the easement or right-of-way.
 - (iv) That all public utilities have access to serve current and future customers.
- (b) In order to make the affirmative findings listed above, the City Council may consider, but is not limited to, the following: the proposed use of the property involved, existing uses of land in the neighborhood, the utilities or roadways located in the easement or right-of-way, the purpose of the easement or right-of-way, and the probable effect of the abandonment upon the immediate preservation of the order, public health, safety, convenience and welfare of the community.

(2) **Procedure to Request Abandonment.**

- (a) The City Council may consider a request to abandon an easement or right-of-way to the underlying fee simple or abutting property owner(s) only after such property owner(s) submit to the City:
 - (i) a completed application to abandon submitted upon forms provided by the City, reviewed and accepted by the City as complete;
 - (ii) an application fee of \$300.00, or as set by the City Manager or his designee from time to time;

- (iii) an appraisal establishing the market value of the easement or right-of-way as determined by a qualified real estate appraiser, if the City Manager or his designee certifies that the appraisal fairly reflects the land value. The appraisal will be at the expense of the underlying fee simple or abutting property owner(s). In the event that the City Manager or his designee does not certify the appraisal, the market value will be determined by a qualified real estate appraiser employed by the City; and
 - (iv) an abandonment fee paid to the City by certified check, money order, or some other form of guaranteed payment, equal to the appraised market value of the easement or right-of-way.
- (b) The City Council shall consider the request for abandonment after public notice is provided and a public hearing is held. Requirements for public notice and a public hearing shall be the same as those public notice and public hearing requirements for zoning map amendments (rezonings) under the City Unified Development Ordinance.
- (c) If the City Council grants the request to abandon, the ordinance abandoning the easement or right-of-way will be filed in the Official Records of Brazos County, Texas. In the event that the City Council denies the request to abandon, the application fee will be forfeited, but the abandonment fee will be reimbursed.

(3) **Substitution.**

- (a) Dedication of a substitute easement or right-of-way may be made in lieu of payment of the abandonment fee if the City Council finds, after holding a public hearing, that: (1) the value of the substitute easement or right-of-way is comparable to the value of the abandoned easement or right-of-way; and (2) the City and all other public utilities consent to the substitution. To determine the comparable value, the City Council shall consider the following:
 - (i) whether the substitute easement or right-of-way is located on the same property as the abandoned easement or right-of-way, and is similar in size and scope of use to the abandoned easement or right-of-way as determined by the City; or
 - (ii) a comparison of the appraised market value of the substitute easement or right-of-way to the appraised market value of the abandoned easement or right-of-way. If the

substitute easement or right-of-way is not located on the same property or the City determines that the size or scope of use of the substitute easement or right-of-way is not similar to the abandoned easement or right-of-way, then the underlying fee simple or abutting property owner(s) shall submit to the City an appraisal establishing the market value of the substitute easement or right-of-way as determined by a qualified real estate appraiser, if the City Manager or his designee certifies that the appraisal fairly reflects the land value. The appraisal will be at the expense of the underlying fee simple or abutting property owner(s). In the event that the City Manager or his designee does not certify the appraisal, the market value will be determined by a qualified real estate appraiser employed by the City;

- (iii) If, based upon the appraisal required in subsection (3)(a)(2), the market value of the substitute easement or right-of-way is less than the market value of the abandoned easement or right-of-way, the underlying fee simple or abutting property owner(s) may dedicate the substitute easement or right-of-way and submit a partial abandonment fee to the City in the amount equal to the difference between the market value of the abandoned easement or right-of-way and the substitute easement or right-of-way.
- (b) To request dedication of a substitute easement or right-of-way, at the time of application and in addition to those items required in subsection (2), the underlying fee simple or abutting property owner(s) will submit to the City the following information related to the substitute easement or right-of-way:
- (i) the appraisal if required under subsection (3)(b);
 - (ii) a metes and bounds description;
 - (iii) a title report;
 - (iii) an executed substitute easement on a form provided by the City, and containing language that conditions the granting of the substitute easement or right-of-way on approval of the abandonment; and
 - (iv) if applicable, the partial abandonment fee.
- (c) If the City Council grants the request to abandon and approves the substitute easement or right-of-way, the substitute easement instrument and the ordinance abandoning an easement or right-of-way will be filed in the Official Records of Brazos County, Texas. In the event that the City Council denies the request to abandon and the substitute easement or right-of-way, the application fee

will be forfeited, but the partial abandonment fee, if any, will be reimbursed.

- (4) Nothing in this section shall be construed to require the City Council to abandon an easement or right-of-way or to give any person a vested right to compel the City to abandon an easement or right-of-way.