

5/21/2012

ORDINANCE NO. 28684

An ordinance amending Article III, Division 1 (composed of Sections 2-21 through 2-26.3) of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended; providing requirements and procedures for the sale of unneeded city real property by public auction; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Division 1, "Generally," of Article III, "Management and Sale of City-owned Real Property," of CHAPTER 2, "ADMINISTRATION," of the Dallas City Code, as amended, is amended to read as follows:

"Division 1. Generally.

SEC. 2-21. INVENTORY OF REAL PROPERTY.

The city manager shall maintain, as part of the city's computerized fixed asset system, a descriptive roster of real property owned by the city.

SEC. 2-22. EXAMINATION OF NEED.

The city manager shall conduct an annual examination of the need for city-owned real property. In conducting this analysis, the city manager shall consider the city's real property requirements expressed through master plans for public facilities, including, but not limited to, libraries, water and wastewater, police and fire, district service centers, streets, and parks. If no need currently or prospectively exists as identified by specific master plans, the real property shall be considered unneeded, and the city manager shall report these findings to the city council and, when appropriate, submit an analysis including zoning, land uses, and development potential in the vicinity of the property.

SEC. 2-23. DECISION TO SELL.

The city council shall determine whether real property should be offered for sale by the city and whether any limitations should be placed on the future use of the property.

SEC. 2-24. PROCEDURES FOR THE SALE OF UNNEEDED REAL PROPERTY BY FORMAL BID OR NEGOTIATION.

(a) In addition to the requirements of Chapter 272 of the Texas Local Government Code, as amended, and except as provided in Subsection (f) of this section, the city manager shall follow the procedures described in this section for the sale of real property other than property used as public right-of-way.

(b) If property has an estimated value of less than \$100,000, the city staff shall make an appraisal of the property to determine fair market value. If property has an estimated value of \$100,000 or more, the city manager shall obtain an independent appraisal of the property to determine fair market value. The appraisal shall be prepared for the city, and the appraiser shall be selected by the city manager.

(c) In order to publicize the availability of property for sale and to attract the attention of all potential buyers, at least 60 days before initiation of formal bid procedures, the city manager shall:

(1) prepare a notice of the contemplated offer for sale and descriptive information and send it to:

(A) all property owners within 200 feet of the property;

(B) real estate brokers known to be active within the immediate community; and

(C) neighborhood associations within the immediate community;

(2) place a "for sale" sign or signs on the property; and

(3) if the estimated value of the property is more than \$100,000 and the property can be developed independently under the Dallas Development Code and the Dallas Building Code, place display advertising giving notice of availability of the property in appropriate newspapers or periodicals.

(d) If the property can be developed independently under the Dallas Development Code and the Dallas Building Code and there is evidence of an interest in the purchase of the property, the city manager shall initiate formal bid procedures in accordance with state law and send bid invitations to potential buyers.

(e) If the property cannot be developed independently under the Dallas Development Code and the Dallas Building Code or is otherwise exempted from bid procedures and publication requirements under state law and there is evidence of an interest in the purchase of the property, the city manager shall initiate negotiations for the sale of the property in accordance with Chapter 272 of the Texas Local Government Code, as amended.

- (f) This section does not apply to:
- (1) the sale or exchange of land to other governmental entities; or
 - (2) the sale of real property by public auction under Section 2-24.1 of this division.

(g) The procedures required by this section that are not required by state law may be waived or modified, by city council resolution, with respect to a particular parcel of land~~[, by resolution of the City Council]~~.

SEC. 2-24.1. PROCEDURES FOR THE SALE OF UNNEEDED REAL PROPERTY BY PUBLIC AUCTION.

(a) Instead of selling real property pursuant to Section 2-24 of this division, the city may sell real property by public auction in accordance with this section and Sections 253.008 and 272.001 of the Texas Local Government Code, as amended.

(b) Before real property is offered for sale at a public auction, the city council, by resolution, shall authorize the sale by public auction and establish a reserve amount for the property that will be the minimum price acceptable to the city for that property.

(c) Notice of a public auction for the sale of real property must be published once a week, for three consecutive weeks before the auction, in a newspaper of general circulation in a county in which the city is located, and, if the real property is located in another county, in a newspaper of general circulation in the county in which the property is located. The first publication of the notice must be before the 20th day before the date of the auction. The notice must include:

- (1) the description and location of the real property;
- (2) the date, time, and location of the public auction; and
- (3) the procedures to be followed at the public auction.

(d) A public auction to sell real property must be conducted in accordance with procedures established by the city manager that are not in conflict with this division, the city charter, Sections 253.008 and 272.001 of the Texas Local Government Code, as amended, or other applicable law.

(e) The procedures required by this section that are not required by state law may be waived or modified, by city council resolution, with respect to a particular parcel of land.

SEC. 2-25. TYPE OF CONVEYANCE.

The city attorney shall determine the type of conveyance or other instrument to be executed by the city prior to the initiation of formal bid procedures or public auction procedures, and this information may be included in the notice when necessary.

SEC. 2-26. BIDDER INFORMATION.

A bidder for the purchase of real property or an interest in real property from the city, whether bidding through formal bid procedures or at a public auction, must state the full name of the prospective purchaser as it should appear in an instrument of conveyance. If a bid is made on behalf of another person, firm, trust, partnership, association, or corporation, disclosure of the facts relating to the agency may be required by the city manager. Failure to furnish the information upon request, before or after bid acceptance, is grounds for rejection of a submitted or accepted bid.

SEC. 2-26.1. CITY MANAGER RECOMMENDATION AND AWARD OF SALE.

(a) Formal bid procedures and negotiated sales. After receipt and tabulation of bids using formal bid procedures or after reaching agreement for a negotiated sale under Section 2-24 of this division, the city manager shall make a recommendation to the city council. The city council may act by resolution to award or reject the sale. Upon approval, the city attorney shall prepare and the city manager shall execute an appropriate instrument of conveyance.

(b) Public auction.

(1) After receipt and tabulation of bids at a public auction under Section 2-24.1 of this division, the city manager shall determine whether the highest qualifying bid equals or exceeds the reserve amount established by the city council for the real property.

(2) If the highest qualifying bid at the public auction equals or exceeds the reserve amount established for the property, the city manager may, without further council action, execute with the successful bidder a purchase and sales agreement and an appropriate instrument of conveyance, as prepared by the city attorney.

(3) If the highest qualifying bid is less than the reserve amount established for the property, the city manager shall make a recommendation to the city council, and the city council may, by resolution, accept or reject the sale. Upon approval of a sale by the city council, the city attorney shall prepare and the city manager shall execute a purchase and sales agreement and an appropriate instrument of conveyance.

(4) For purposes of this subsection, "highest qualifying bid," means the highest bid received from a prospective purchaser who is financially capable of purchasing the property and meets all qualifications established by the city for ownership of the property.

SEC. 2-26.2. ABANDONMENT OF PUBLIC RIGHTS-OF-WAY.

(a) Application by property owner. A property owner whose property abuts a public right-of-way may apply to the city manager for abandonment, in whole or in part, of the abutting right-of-way. An application must be accompanied by:

- (1) a nonrefundable application fee of \$2,500, plus recording fees;
- (2) the written concurrence of all persons who own property abutting the area proposed to be abandoned; and
- (3) copies of recorded deeds showing current ownership of all property abutting the area proposed to be abandoned.

(b) Investigation and notice. Upon receipt of an application for abandonment of a public right-of-way, the city manager or the city manager's designee shall investigate the request and send written notice of the requested abandonment to all affected city departments, all public service franchise holders, and, if the proposed right-of-way abandonment is outside of the central business district freeway loop, then to all persons owning property within 300 feet of the right-of-way proposed to be abandoned.

(c) Date of valuation. The date for establishing the market value of the area proposed to be abandoned is the date the abandonment request is considered by the city council. Any independent appraisal used to establish market value for an abandonment must be performed not more than 180 days before the date on which the city council considers the abandonment request. The city manager or the city manager's designee may require that a more current independent appraisal be performed at the applicant's expense if the city manager or the city manager's designee determines that the market value of the proposed abandonment area has significantly changed since the date of the last independent appraisal.

(d) Market value.

(1) If the estimated abandonment fee, to be established in accordance with Subsection (f), is less than \$20,000:

(A) the city staff may use the appraised land value per square foot, as determined by the Dallas Central Appraisal District, of a fee simple interest in a useable tract of an abutting property to determine market value of the area proposed to be abandoned; or

(B) the city manager or the city manager's designee may obtain an independent appraisal of the property to determine the per-square-foot market value of the area proposed to be abandoned, if the city manager or city manager's designee has reason to believe the proposed abandonment area has experienced increases in property value.

(2) If the estimated abandonment fee is \$20,000 or more, the city manager or the city manager's designee shall obtain an independent appraisal of the property to determine the per-square-foot market value of the area proposed to be abandoned.

(3) If an independent appraisal is obtained under Paragraph (1)(B) or (2) of this subsection, the proposed abandonment area must be appraised as if it were an assembled portion of the applicant's abutting property. The applicant shall pay the city the cost of an independent appraisal whether or not the abandonment is approved.

(e) Cases of disputed value. If the first appraisal obtained by the city is disputed by the applicant, the applicant shall obtain a second independent appraisal at the applicant's expense. If the city manager or the city manager's designee determines that there is a substantial difference between the two appraisals, the city manager or the city manager's designee shall engage an independent appraiser to perform a review appraisal, the cost of which must be paid by the applicant. The city manager or the city manager's designee shall then make a final determination of market value, which will be binding upon both parties.

(f) Fees for abandonment. Before the city council authorizes the abandonment of all or part of a public right-of-way, the applicant shall pay an abandonment fee calculated in accordance with one of the following methods:

(1) Fee for a street, alley, or storm water management area abandonment: an amount equal to the square footage of the area abandoned x the market value of the area per square foot, or a \$5,400 processing fee, whichever is greater. If property rights are retained by the city, the appraiser may, if warranted, discount the market value up to, but not exceeding:

(A) 15% for a full abandonment with any encumbrance or easement retained;

(B) 30% for an air rights abandonment;

(C) 70% for a subsurface rights abandonment; and

(D) 85% for an air rights abandonment deed restricted against use.

(2) Fee for an abandonment of a utility or drainage easement originally dedicated to the city at no cost: \$5,400 processing fee, plus \$1,000 for each easement in excess of five being abandoned.

(3) Fee for an abandonment of a utility or drainage easement originally purchased by the city: an amount equal to the greatest of:

(A) the square footage of the area abandoned x the market value of the area per square foot x 50%;

(B) the square footage of the area abandoned x the per-square-foot purchase price of the easement when originally purchased by the city; or

(C) a \$5,400 processing fee.

(4) Fee for an abandonment of a street, alley, or storm water management area originally dedicated at no cost to the city when the original dedicator applies for abandonment before the sale of abutting property has been made: \$5,400 processing fee.

(g) Other abandonment regulations. The following regulations govern abandonment of public rights-of-way when applicable:

(1) If additional property owned by an applicant in the area of the proposed abandonment is needed by the city for public streets or other public purposes, the applicant may be allowed a square foot for square foot credit against the area to be abandoned. If the area dedicated to the city exceeds the area abandoned, the applicant will be charged only a \$2,500 application fee, a \$5,400 processing fee, and recording fees.

(2) An applicant will not be allowed a credit against the proposed abandonment for the dedication of a utility easement or the conversion of a right-of-way to a utility easement.

(3) An applicant will not be allowed a credit against the proposed abandonment for conversion of a right-of-way to a private street, private alley, or private drive, except when allowed under Subsection (h) of this section.

(4) The fees and procedures specified in this section, except for the processing fees required by Subsections (f), (g)(1), and (h)(4), may be waived or modified for a particular parcel of land upon approval of the city council, unless otherwise provided by another city ordinance, the city charter, or state law.

(h) Abandonment credit for private streets, alleys, and drives.

(1) An applicant will be allowed a credit against the proposed abandonment of a public right-of-way in a residential development if the applicant is a developer who has acquired an area for development and agrees to construct the following or is a homeowner or homeowner association who desires to convert existing public streets and alleys in a development into the following:

(A) private streets and private alleys in an R, R(A), D, D(A), TH, TH(A), CH, or central area district, as defined in the Dallas Development Code, adequate to serve the area's development, provided that:

(i) each private street or private alley complies with all standards and requirements governing private streets and alleys set forth in Section 51A-4.211 of the Dallas Development Code;

(ii) the applicant obtains a special use permit for each private street or private alley as required by Section 51A-4.211 of the Dallas Development Code;

(iii) the applicant agrees to accept full responsibility for maintenance of each private street or private alley; and

(iv) any existing public street or alley, when converted to a private street or alley, may not be altered except as necessary to maintain the street or alley in the same or better condition;

(B) private drives in an MF or MF(A) district, as defined in the Dallas Development Code, provided that:

(i) each private drive is built to the same specifications as a street dedicated to public use, with a minimum width of 24 feet with no curb requirement, when adjacent to parking, and a minimum width of 20 feet with a curb requirement, when not adjacent to parking; and

(ii) each private drive contains service easements including, but not limited to, utilities, fire lanes, street lighting, government vehicle access, mail collection and delivery access, and utility meter reading access; or

(C) private drives in a multifamily housing development located within a planned development district, provided that:

(i) each private drive or portion of a private drive for which a credit is claimed is located within the city's Intown Housing Program area, which is described in Resolution Nos. 93-1822 and 96-0279 as that area contained within a one-mile radius of the central business district;

(ii) each private drive is built to the same specifications as a street dedicated to public use, with a minimum width of 24 feet with no curb requirement, when adjacent to parking, and a minimum width of 20 feet with a curb requirement, when not adjacent to parking;

(iii) each private drive contains service easements including, but not limited to, utilities, fire lanes, street lighting, government vehicle access, mail collection and delivery access, and utility meter reading access; and

(iv) only that portion or side of a private drive that abuts property used exclusively for multifamily housing is eligible for the credit.

(2) A private street, private alley, or private drive for which a credit is allowed must be restricted to residential uses only for 40 years from the date of passage of the abandonment ordinance, unless the restriction is sooner removed by ordinance of the city council. If the restriction is removed before the 40-year period expires, the applicant, or the applicant's heirs, successors, or assigns, shall pay a nonprorated abandonment fee calculated in accordance with the requirements of this section as those requirements existed on the date the abandonment ordinance was originally passed.

(3) If a public right-of-way is abandoned under this subsection to a homeowner association for conversion to a private street, private alley, or private drive, the ordinance authorizing the abandonment must include a provision stating that, if the homeowner association becomes defunct, each individual homeowner, and each homeowner's heirs, successors, and assigns, shall become liable for all of the terms and conditions of the abandonment ordinance.

(4) Before the city council authorizes the abandonment of all or part of a public right-of-way for conversion to a private street, private alley, or private drive for which a credit is allowed under this subsection, the applicant shall pay a fee of \$5,400 for processing the transaction, plus all applicable application, appraisal, and recording fees.

SEC. 2-26.3. RESERVED."

SECTION 2. That CHAPTER 2 of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

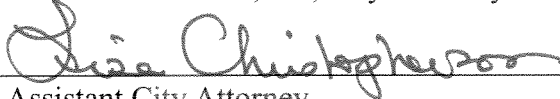
SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By


Assistant City Attorney

Passed

JUN 27 2012

LC/DCC/00519A