

## Request for Council Action Routing Form

(RCA) **SUBJECT:** Ordinance authorizing the amendment of Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and to authorize the Director, Department of Public Works and Engineering (PWE), to approve such requests.

(RCA) **RECOMMENDATION:** (Summary) It is recommended City Council approve an Ordinance amending Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and authorizing the Director, Department of Public Works and Engineering (PWE), to approve such requests.

Council Agenda Date: \_\_\_\_\_, 2012

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| CUIC ID#20DOB055   |
| (Circle One)<br>Motion<br>Resolution<br>Ordinance  |
| Originator/Prime Author<br>Debbie O'Briant<br>Senior Real Estate Analyst<br>Phone # (832) 395-3123 |

| Routing Order:<br>(Originator/Prime Author specified by name)              | Date/time<br>Received | Date/time<br>Transmitted | Comments: |
|--|-----------------------|--------------------------|-----------|
| Manager, PW&E<br>William S. Boaz<br>(832) 395-3117                         |                       |                          |           |
| Senior Assistant Director, PW&E<br>Nancy P. Collins<br>(832) 395-3130      |                       |                          |           |
| Resource Management Division, PW&E<br>Mai Pham<br>(832) 395-2615           |                       |                          |           |
| Deputy Director, PDS<br>Mark L. Loethen, P.E., CFM, PTOE<br>(832) 395-2705 |                       |                          |           |
| Agenda Coordinator, PW&E<br>Ruth Gonzales<br>(832) 395-2458                |                       |                          |           |
| Chief of Staff, PW&E<br>Howard Hilliard<br>(832) 395-2518                  |                       |                          |           |
| Director, PW&E<br>Daniel Krueger, P.E.                                     |                       |                          |           |
| Director, City Council Agenda<br>Marta Crinejo<br>(832) 393-1091           |                       |                          |           |
| City Secretary's Office<br>Anna Russell<br>(832) 393-1100                  |                       |                          |           |

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**TO: Mayor via City Secretary      REQUEST FOR COUNCIL ACTION**

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| <b>SUBJECT:</b> Ordinance authorizing the amendment of Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and to authorize the Director, Department of Public Works and Engineering (PWE), to approve such requests.  | Page<br><b>1</b> of <b>2</b>  | Agenda Item #   |
| <b>FROM (Department or other point of origin):</b>  | <b>Origination Date</b>   | <b>Agenda Date</b>  |
| Department of Public Works and Engineering  |   |   |
| <b>DIRECTOR'S SIGNATURE:</b>  | <b>Council District affected:</b>                                   |   |
| Daniel W. Krueger, P.E., Director   | All Districts   |   |
| <b>For additional information contact:</b>  | <b>Date and identification of prior authorizing Council Action:</b> |   |
| Nancy P. Collins <b>Phone:</b> (832) 395-3130<br>Senior Assistant Director-Real Estate  |   |   |
| <b>RECOMMENDATION: (Summary)</b> It is recommended that City Council approve an Ordinance amending Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and authorizing the Director, Department of Public Works and Engineering (PWE), to approve such requests.   |   |   |
| <b>Amount and Source of Funding:</b> Not Applicable   |   |   |
| <b>SPECIFIC EXPLANATION:</b><br><br>Developing property for residential or commercial building projects often requires the relocation of City facilities, including street and alley rights-of-way and underground easements for utility purposes. In the City of Houston, such requests are processed by the Joint Referral Committee (JRC), which consists of representatives from the Planning and Development Services Division and the Traffic Operations Division of the Department of Public Works and Engineering, the Fire Department, the Police Department, the Legal Department, and the Planning and Development Department.<br><br>The JRC reviews all abandonment and encroachment requests to ensure continued mobility and adequate access to public water, wastewater, and storm sewer utilities. The work of the JRC is part of the important balance between facilitating growth and development while safeguarding the City's ability to efficiently provide services to ratepayers and taxpayers. Currently, JRC actions require City Council approval at two steps in the process. The first is a motion to approve the essential transaction requirements of the agreement, and the second is an ordinance to finalize the transaction when the property owner has completed the requirements.<br><br>In order to further expedite the JRC process, PWE requests City Council approve an amendment to the Code of Ordinances that would allow the PWE Director to administratively approve the most basic of JRC actions, namely the abandonment of City easements for utility purposes, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value. These actions are very straightforward and generally involve moving an easement out of the way of proposed construction. |   |   |
| z:\Easement to Easement RCA.docx  |   | CUIC #20DOB055  |
| <b>REQUIRED AUTHORIZATION</b>   |   |   |
| <b>Finance Department:</b>  | <b>Other Authorization:</b>   | <b>Other Authorization:</b>   |
|   |   | Mark L. Loethen, P.E., CFM, PTOE<br>Deputy Director<br>Planning and Development Services Division |

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| <p><b>Subject:</b> Ordinance authorizing the amendment of Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and to authorize the Director, Department of Public Works and Engineering (PWE), to approve such requests.</p>  | <p><b>Originator's<br/>Initials</b></p> | <p><b>Page</b><br/><u>2</u> of <u>2</u></p> |
| <p>In such cases the property owner requests the City abandon the conflicting easement and proposes a new location within the same tract of land. The JRC reviews the proposal to determine that it meets the City's needs. If approved, a motion setting out the terms required to complete the transaction is placed on the Council Agenda. Typically these terms require that the property owner pay a sum equal to the value of the old easement minus the value of the new easement, to be determined by appraisal. The property owner is also required to pay for the relocation/reconnection of the lines within the easement and convey that infrastructure, along with the new easement, to the City. When Council authorizes the transaction by motion, the property owner may proceed with the work. When the required actions are complete, and the City receives any payment it is due, Council is asked to approve an ordinance that finalizes the abandonment and sale of the easement and conveyance to the City of the new easement.</p> <p>With the proposed Code Amendment, in cases where the value of the new easement is equal to or greater than the old easement, the PWE Director would be authorized to administratively approve the transaction. This abbreviated process could be used only if:</p> <ul style="list-style-type: none"> <li>• The transaction involves only the abandonment of easements for utility purposes and not other real property interests, including streets or alleys;</li> <li>• The easement(s) to be conveyed to the City contains equal or greater square footage than the easement(s) to be abandoned within the same tract of land and part of the same development project;</li> <li>• The market value of the easement(s) to be conveyed to the City is equal to or greater than the value of the easement(s) to be abandoned; and,</li> <li>• The new easement(s), in the sole opinion of the PWE Director, is necessary and appropriate for the operation of the City's public utility systems.</li> </ul> <p>So that Council will remain informed on proposed development projects, PWE will report to Council on any transactions that are administratively approved. This process would be similar to that used to report on Developer Participation Contract approvals.</p> <p>Further, in order to reduce the cost and time needed to conduct formal appraisals that are unnecessary for these transactions, the proposed amendment also provides that an appraisal will not be required if the old and new parcels are within the same tract of land and are part of the same development project. In such cases the square footage and location of the parcels would be sufficient evidence of their comparative value.</p> <p>Therefore, it is recommended that City Council approve an Ordinance amending Article VI of Chapter 2 of the Code of Ordinances of the City of Houston, Texas, to add a new Section 2-242 authorizing the abandonment of easements for utility purposes owned by the City, in exchange for the conveyance to the City of easements for utility purposes of equal or greater value, and to authorize the Director, Department of Public Works and Engineering (PWE), to approve such requests.</p> <p>DWK:NPC:dob</p> <p>c: Jun Chang, P.E., D.WRE<br/>Marta Crinejo<br/>Eric Dargan<br/>David Feldman<br/>Marlene Gafrick<br/>Terry A. Garrison<br/>Daniel Menendez, P.E.</p> |   |   |

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 2 OF THE CODE OF ORDINANCES, CITY OF HOUSTON, TEXAS, BY ADDING A NEW SECTION 2-242 AUTHORIZING THE ABANDONMENT OF CERTAIN EASEMENTS FOR UTILITY PURPOSES OWNED BY THE CITY OF HOUSTON IN EXCHANGE FOR EASEMENTS FOR UTILITY PURPOSES OF EQUAL OR GREATER VALUE; AUTHORIZING THE DIRECTOR OF THE PUBLIC WORKS AND ENGINEERING DEPARTMENT TO EXECUTE AND RECEIVE DOCUMENTS IN ORDER TO EFFECT SUCH EXCHANGES; APPROVING A FORM OF QUITCLAIM DEED AND EASEMENT CONVEYANCE; CONTAINING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

\* \* \* \* \*

WHEREAS, Texas Local Government Code Section 272.001(b)(3) provides that political subdivisions may exchange real property interests, including easements, for other land to be used for public purposes; and

WHEREAS, Section 2-238 of the Code of Ordinances, City of Houston, Texas (the "Code"), provides that the City of Houston (the "City") may abandon and sell easements to the abutting owner or owners upon the fulfillment of certain requirements, including payment of the appraised market value of the City's easement(s); and

WHEREAS, the Director of the Department of Public Works and Engineering has advised that a number of applications are made to the City that solely involve the abandonment of easements for utility purposes owned by the City in exchange for the applicant's conveying to the City one or more easements for utility purposes of equal to or greater monetary value, and that, as such exchanges do not involve appropriations of City funds or a diminution in the value of property owned by the City, it would be advisable for these exchanges to be processed administratively rather than being individually submitted to City Council; **NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That City Council hereby adopts the findings set out in the preamble hereof, and such findings are determined to be true and correct and are adopted as part of this Ordinance.

**Section 2.** That Chapter 2 of the Code of Ordinances of the City of Houston, Texas, is hereby amended by adding a new Section 2-242, which shall read as follows:

**"Sec. 2-242. Exchange of easements.**

(a) The director of the department of public works and engineering is hereby authorized to approve the exchange of easements for utility purposes between the city and another property owner, without further action of the city council, upon determining that the following conditions exist:

- (1) The easement to be conveyed to the city contains square footage equal to or greater than the easement to be abandoned by the city in exchange;
- (2) The market value of the easement to be conveyed to the city is equal to or greater than the market value of the easement that the city is to abandon;
- (3) The proposed transaction involves only the exchange of easements and does not involve the abandonment and sale or conveyance of other real property interests; and
- (4) The proposed easement to be conveyed to the city, in the sole opinion of the director of the department of public works and engineering, is necessary or appropriate for the operation of the city's public utility systems.

(b) The market value of the easement to be conveyed to the city shall be deemed to be equal to or greater than the market value of the easement that the city is to abandon, if:

- (1) The easement to be conveyed to the city contains total square footage equal to or greater than easement to be abandoned by the city, and
- (2) All easements involved in the exchange are within the same tract of land and are part of the same development project. In such cases, the square footage and location of the parcels shall be sufficient evidence of their comparative value.

(c) If the conditions in subsection (b) of this section are met, the director shall not be required to appraise the easements involved in the exchanges contemplated by this section, notwithstanding other provisions of this Code.

(d) Notwithstanding the foregoing, the director of the department of public works and engineering, in his discretion, may submit any proposed easement exchange to the city council for consideration."

**Section 3.** That the conveyances from the City to the applicant shall be effected by a Quitclaim Deed substantially in the form attached hereto as **Exhibit "A,"** and the conveyances from the applicant to City shall be effected by an Easement Conveyance substantially in the form attached hereto as **Exhibit "B."**

**Section 4.** That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 5.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.


PASSED AND ADOPTED this the \_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is \_\_\_\_\_.

\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept.   
(GWD:gwd 03/21/2012) Senior Assistant City Attorney  
(Requested by Daniel W. Krueger, P.E., Director, Public Works and Engineering Department)

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