

**ORDINANCE NO. O-2009-118**

**AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF A PORTION OF RIGHT-OF-WAY KNOWN AS EAST 6<sup>th</sup> STREET. THE PORTION OF RIGHT-OF-WAY IS LOCATED AT THE INTERSECTION OF ROSELAND BOULEVARD CONTINUING EAST TO THE INTERSECTION OF DONNYBROOK AVENUE; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH ABANDONMENT; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the applicant is requesting the closure of a portion of right-of-way known as East 6th Street. The portion of right-of-way is located at the intersection of Roseland Boulevard continuing east to the intersection of Donnybrook Avenue.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That the public right-of-way described below, and the same is hereby abandoned, vacated and closed insofar as the right, or title of the public is concerned:

A portion of right-of-way known as East 6<sup>th</sup> Street. The portion of right-of-way is located at the intersection of Roseland Boulevard continuing east to the intersection of Donnybrook Avenue.

**PART 2:** That closure and abandonment are contingent upon and subject to the following:

1) Closure and abandonment are contingent upon Applicant entering into a voluntary Development Agreement with the City of Tyler that provides for the following requirements to serve the general public:

a) Applicant voluntarily agrees in the event that the building constructed over the abandoned. ROW is sold or a controlling interest is sold within 15 years from the date of and adoption of the thorough fare closure ordinance by the City Council, Applicant shall either pay to the City of Tyler the amount of \$300,000 (subject to being increased in accordance with any increases in the CPI from time of this action up to the time of any sale) or said abandoned ROW shall revert to the City of Tyler for public use,

b) That closure and abandonment are contingent upon the City retaining a public easement along or near to the abandoned ROW to be shown on an exhibit based on Applicant's submitted drawings, in order to allow for vehicular traffic to travel and have access between Roseland Blvd. and Donnybrook Ave. at or near the former 6<sup>th</sup> Street locations,

c) That closure and abandonment not occur until one week prior to beginning of demolition, construction, and/or expansion of buildings for facilities by Applicant,

d) That closure and abandonment not occur until two weeks notice of such action under (c) above is posted at both ends of the ROW subject to closure,

e) That closure and abandonment are contingent upon and will not become effective until and unless the Applicant replats the property within 6 months (or by May 18, 2010) from the date of and adoption of the thorough fare closure ordinance by the City Council,

f) The terms of voluntary Development Agreement may be approved and modified by the City Manager without action of Council providing the intent of the original agreement is kept intact.

2) Closure and abandonment and the Development Agreement are null and void if construction does not begin within 2 years from the date and adoption of the thorough fare ordinance. If replatting had occurred under item (1e) above, Applicant shall replat the subject land to show original ROW within six (6) months of when the contract becomes null and void.

3) Signage-- Monument signs and if the lighting is back lit, then the letters must be carved out, if the lighting is front lit, there is no restriction, but the signage must comply with City ordinances.

4) Parking – to continue to exceed City Code and National Standards, approximately 1 space for each 2 beds, however number of spaces is required to be and also limited to 360 and no multi-story parking garage allowed.

5) Removal of Older Buildings on the northern side of property will occur as soon as possible and be replaced with nice landscaping in that area including berms and additional trees.

**PART 3:** That said public right-of-way is not needed for public purposes and it is in the public interest of the City to abandon said described public right-of-way, other than the terms and conditions set out above.

**PART 4:** That the abandonment provided for herein shall extend only to the public right, title and overlay with ingress/egress, public utility easement and to the tracts of land described in this ordinance, and shall be construed only to that interest that the governing body of the City of Tyler may legally and lawfully abandon.

**PART 5:** Should any section, subsection, sentence, provision, clause or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause or phrase of this ordinance and same are deemed severable for this purpose.

**PART 6:** That this ordinance shall be effective on and after its date of passage and approval by the City Council.

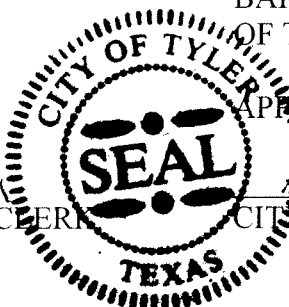
**PASSED AND APPROVED** this the 18<sup>th</sup> day of November, A.D., 2009.



BARBARA BASS, MAYOR  
OF THE CITY OF TYLER, TEXAS

A T T E S T:

  
CASSANDRA BRAGER, CITY CLERK



A P P R O V E D:

  
AMY C. LANDERS, CITY ATTORNEY