

Secs. 40-338, 40-339. Reserved.

## ARTICLE XV. ALLEYS

### DIVISION 1. GENERALLY

#### Sec. 40-340. Scope of article; application; definitions.

(a) This article shall govern the improvement and use of the types of alleys, as defined herein, whether such improvement or use shall be for public use or pursuant to private rights of access.

(b) The provisions of this article shall apply only to alleys, as herein defined, but shall not apply to alleys platted, dedicated, and/or constructed subsequent to September 19, 1982, or dedicated and/or improved in conformity with Chapter 42 of this Code.

(c) The following words, terms and phrases used in this article shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

*Alley* shall mean the entire width between property lines forming any public right-of-way and which is designed primarily for secondary access to abutting properties having their primary access from an adjacent street or an approved or compensating open space or courtyard which has direct access to a public street.

*Applicant* shall mean a person who owns real property abutting an alley and seeks to improve such alley for motorized vehicular traffic use either by the public or pursuant to private rights of access.

*Improve or improvement* shall mean the filling, grading, raising, paving, re-paving, surfacing or other work done to change or alter the surface of, or drainage for, any alley, including any work, or the application of any material of whatever type, in, upon or to the surface or subsurface of an alley for the purpose of rendering such alley accessible by or usable for motorized vehicular purposes.

*Paving* shall mean the construction of any improvements to, or upon, any alley, including drainage or other similar work and the prepara-

tion and construction of both the subsurface and ultimate wearing or top surface of any alley, pursuant to the minimum standards set forth in section 40-343 of this Code.

*Private rights of access* shall mean those private rights of ingress and egress recognized by Texas law as being appurtenant to the purchase of real property by reference to a map or plat showing streets or alleys abutting such real property.

*Public use* shall mean a use or right of use available to the public in general, as distinguished from a particular individual or group of individuals. Public use alleys shall refer to alleys available for vehicular use and travel by the general public.

(Ord. No. 99-379, § 3, 4-21-99)

#### Sec. 40-341. Purpose, interpretation; type of alley covered; determination.

(a) The purpose of this article is to prescribe:

- (1) Rules and regulations governing the improvement of certain alleys in the city; and
- (2) Minimum standards and criteria for the improvement, including paving, of alleys that are to be improved and maintained for motorized vehicular or pedestrian use by the public.

(b) The terms and provisions of this article shall be interpreted and applied as minimum requirements adopted for the protection of the public health, safety and welfare and shall be applied to the alleys covered hereby, unless specifically provided otherwise herein.

(c) The department of public works and engineering will determine whether an alley has been dedicated to and accepted for use by the city, based upon its records, and to the extent necessary, the records of other city departments and applicable county records.

(Ord. No. 99-379, § 3, 4-21-99)

DIVISION 2. PUBLIC USE ALLEYS

**Sec. 40-342. Initiating improvement of alley for public use; criteria.**

(a) *Procedure.* The improvement of an alley for public use may be initiated by:

- (1) Any person(s) owning real property abutting an alley who agree(s) to obtain the permit required by section 40-344 of this Code and comply with all requirements applicable to such alley, as provided in this article, including **payment of all costs of improving such alley for public use**; or
- (2) The **filing of a petition** with the city engineer, signed by at least **75 percent** of the **property owners** abutting such alley, wherein such abutting owners agree to pay their share of the costs to improve such alley through the city's usual paving assessment procedures.

(b) *Determination by city engineer.* No alley shall be improved or maintained for public use unless the city engineer authorizes the issuance of an appropriate permit after determining that:

- (1) The improvement of such alley for public use will serve a bona fide public purpose and need;
- (2) The traffic entering upon or exiting from such alley to an adjacent public street **will not result in a significant impediment to existing traffic flow or constitute a traffic hazard**;
- (3) The condition or location of **underground or above-ground utilities**:
  - (i) **will not be damaged** or otherwise adversely affected by the opening of such alley; or;
  - (ii) if existing utilities would be adversely affected, the applicant agrees to **relocate such utilities**, at applicant's sole cost and expense;
- (4) The condition and location of underground or above-ground utilities are such that it is unlikely that any paving or other surface improvements to be constructed

or installed in such alley will be disturbed to replace, repair or upgrade such utilities within the succeeding five years; and

- (5) Any applicant seeking a permit to improve such alley for public use has **demonstrated the financial ability to fully comply with the requirements of this article**, including, without limitation, the improvement of the alley to the standards prescribed in section 40-343 of this Code, if applicable.

(c) *Minimum requirements.* The following requirements shall apply in connection with the improvement for public use of any alley:

- (1) A minimum right-of-way width of ten feet shall be available within such alley;
- (2) Alleys with a right-of-way width of 20 feet or less shall be restricted to one-way traffic and shall connect two public streets;
- (3) The junction of the alley and any connecting public street shall be at right angles, except as otherwise approved by the city engineer;
- (4) The alley shall be constructed and improved in accordance with the standards, specifications and requirements set forth in section 40-343 of this Code;
- (5) Minimum paving widths shall be **12 feet for alleys with a right-of-way width of 15 feet or more and eight feet for alleys with a right-of-way width of less than 15 feet**; and
- (6) An **applicant must obtain the permit and post the bond (or cash deposit) required by this article.**

(Ord. No. 99-379, § 3, 4-21-99)

**Sec. 40-342.1. Acceptance of existing alleys for public use.**

(a) *Purpose.* The purpose of this division is to provide a procedure alternative to provisions of section 40-342 of this Code whereby the owners of property abutting an alley ("**applicants**") **may petition the city to accept the alley for public purposes.**

- (b) *Scope.* This section does not apply to:
- (1) Service drives or other routes that serve the principal purpose of providing access for a single property;
  - (2) Public streets; or
  - (3) Any alley that has been duly accepted by the city by any other method.
- (c) *No abridgement or limitation on deed restrictions.* With respect to private individuals and entities, this section and/or the city's decision to accept and maintain an alley hereunder does not abridge or limit any current or future deed restrictions that apply to such alley or any easement or right-of-way adjacent to the alley.
- (d) *Petition—Form.* The applicants seeking city acceptance of an alley for public use shall submit to the city engineer a petition in the form promulgated therefor by the director of public works and engineering or his designee, who may revise the petition form from time to time as he deems appropriate.
- (e) *Petition—Number of applicants.* For the city engineer to consider such a petition, the minimum number of applicants required to sign the petition shall be as follows:
- (1) If the alley was dedicated to public use by a recorded plat or instrument, 51% of all persons owning property abutting the alley, on a block-by-block basis, between two streets; or
  - (2) If the alley was not dedicated to the public by a recorded plat or separately recorded instrument, 100% of all persons owning property abutting the alley on a block-by-block basis, between two streets.
- (f) *Petition—Required accompaniments.* Along with the signed petition, the applicants must provide the following:
- (1) Copies of recorded instruments vesting title in all property owners abutting the alley;
  - (2) If there are any city-owned signs or markers in the alley, photographs of such signs or markers;
- (3) If any fence, structure or other item of private property (other than property owned by private utilities) encroaches into the alley, the written agreement of the owner of such structure or property to move same, as required by subsection (i) of this section;
  - (4) A list of city services to be provided in the alley that the applicants are requesting, if any;
  - (5) Any other proof of ownership as deemed necessary by the city engineer; and
  - (6) Upon request by the city engineer, a boundary and a topographic survey by a surveyor licensed to practice in the State of Texas showing improvements, easements, rights-of way, drainage, utilities, water lines, sanitary sewers, storm sewers, ditches, culverts, encroachments, and extent and type of pavement surface.
  - (g) *Standards.* In order to be accepted by the city, an alley must meet the standards set forth in the Infrastructure Design Manual, as promulgated and revised from time to time by the public works and engineering department, unless the city engineer determines that it is necessary or appropriate to alter or waive one or more standards with respect to a particular alley, if in the public interest to provide public access.
  - (h) *Acceptance.* The city is not obligated to accept any alley. The determination of whether the city will accept an alley shall be made by the city engineer, whose decision shall be final. When an application is denied, no subsequent application for acceptance of the same alley shall be eligible for consideration for at least one year, unless this limitation is waived by the city engineer for good cause.
  - (i) *Removal of encroachments.* The owner of any fence, structure or other item of private property (other than property owned by private utilities) that encroaches into

the alley shall ~~remove same within 30 days~~ following acceptance of the alley by the city.

(Ord. No. 08-167, § 2, 2-27-08)

**Sec. 40-342.2. Inventory of alleys.**

The department of public works and engineering shall make reasonable efforts to maintain an inventory of alleys within the city, to determine whether such alleys are accepted for ~~public use~~ or are ~~for private access~~, and to maintain such inventory in a form that is accessible to the public. A ~~copy of the inventory~~ shall be maintained on file in the office of the city engineer.

(Ord. No. 08-167, § 2, 2-27-08)

DIVISION 3. MINIMUM STANDARDS;  
PERMIT

**Sec. 40-343. Paving standards.**

Alleys to be improved and maintained for public use shall be paved to the minimum standards and specifications, including the types of materials allowed, set forth in ~~Public Works Drawing No. 7879-A.~~

(Ord. No. 99-379, § 3, 4-21-99)

**Sec. 40-344. Permit required.**

It shall be ~~unlawful for any person to do, or cause to be done, any work to improve an alley for public use without a permit having been issued to such person~~ as provided in section 40-55 et seq. of this Code.

(Ord. No. 99-379, § 3, 4-21-99)

**Sec. 40-345. Bond; cash deposit.**

~~No work to improve an alley for public use shall be commenced until the bond required~~ by section 40-59, or a cash deposit in lieu of such bond, as authorized by section 40-60 of this Code, has been filed or deposited with the city engineer.

(Ord. No. 99-379, § 3, 4-21-99)

DIVISION 4. USE OF ALLEYS FOR PRIVATE ACCESS

**Sec. 40-346. Use of alley.**

(a) *Use.* ~~Any alley not improved or maintained for public use~~ may be improved and used pursuant to ~~private rights of access held by the owners of abutting lots or property~~, under the terms and conditions provided by this section.

(b) *Application.* ~~Any abutting property owner may apply to the city engineer for permission to improve and use an alley for private access~~ from a public street to such applicant's property.

(c) *Requirements.* An applicant seeking the private use of an alley must:

- (1) Be the fee simple owner of land abutting the alley;
- (2) ~~Obtain a permit pursuant to section 40-86 of this Code to connect such alley to any public street;~~
- (3) Prepare and construct the surface of the alley so as to ~~prevent the drainage of storm~~ or surface water or runoff onto adjacent property;
- (4) ~~Assure drainage of stormwater and other runoff along the alley and into the intersecting street~~ or drainage facilities; and
- (5) If an applicant elects to ~~post signs~~ in connection with the private use of an alley, which election may be made in the applicant's sole discretion, such signs must be of a size, color and with wording and printing that is approved by the city engineer, must be posted at both sides of the street entrance to the alley as required by chapter 41 of this Code, and such signs must state that the ~~alley is being used for private access and is not maintained by the city.~~

(d) *Materials.* Alleys to be used for private rights of access may be ~~improved, constructed and/or surfaced with shell, gravel, asphalt, concrete or other materials~~, at the option of the applicant.

(e) *Non-liability of city.* With respect to any alley used or to be used for private rights of access, the ~~city shall have no liability for:~~

- (1) ~~Maintenance of the alley;~~
- (2) ~~Patrolling the alley; or~~
- (3) ~~Drainage of stormwater or other surface runoff from such alley onto abutting properties.~~

(f) *No bond required.* The provisions of sections 40-59 and 40-60 of this Code shall not be applicable in the instance of any public alley improved or used pursuant to private rights of access.

(Ord. No. 99-379, § 3, 4-21-99)

**Secs. 40-347—40-350. Reserved.**

## ARTICLE XVI. SITTING AND LYING UPON PUBLIC SIDEWALKS

### Sec. 40-351. Definitions.

As used in this article, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless the context of their use clearly indicates another meaning:

*Central Business District* means the area beginning at the intersection of the centerline of U.S. 59 and the centerline of I.H. 45; thence in a northwesterly and northerly direction along the centerline of I.H. 45 to its intersection with the centerline of I.H. 10; thence in an easterly direction along the centerline of I.H. 10 to its intersection with the centerline of U.S. 59; thence in a southwesterly direction along the centerline of U.S. 59 to its intersection with I.H. 45, the point of beginning.

*Designated area* means the following areas finally approved and designated by the city council under section 40-353 of this Code:

- (1) *The Central Business District.*
- (2) *Midtown Area:* The area described in Exhibit A to Ordinance No. 2004-825, a copy of which is on file in the office of the city secretary.
- (3) *Old Sixth Ward Area:* The area described in Exhibit A to Ordinance No. 2006-922, a copy of which is on file in the office of the city secretary.
- (4) *Avondale Area:* The area described in Exhibit A to Ordinance No. 2006-923, a copy of which is on file in the office of the city secretary.
- (5) *Greater Hyde Park Area:* The area described in Exhibit A to Ordinance

No. 2006-924, a copy of which is on file in the office of the city secretary.

*Sidewalk* means that portion of the public street that is between the curblines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for or is ordinarily used for pedestrian travel. (Ord. No. 02-504, § 4, 6-12-02; Ord. No. 04-825, § 4, 8-3-04; Ord. No. 06-922, § 4, 9-6-06; Ord. No. 06-923, § 4, 9-6-06; Ord. No. 06-924, § 4, 9-6-06)

### Sec. 40-352. Sitting and lying down on sidewalks.

(a) It shall be unlawful for any person to sit or lie down on a sidewalk or on a blanket, stool, or any other object placed upon a sidewalk between the hours of 7:00 a.m. and 11:00 p.m. in a designated area.

(b) It shall be unlawful for any person to place or deposit any item of bedding materials or personal possessions, including but not limited to any blanket, bag, package, or container of personal possessions on a sidewalk between the hours of 7:00 a.m. and 11:00 p.m. in a designated area.

(c) It is an affirmative defense to any prosecution under subsection (a) or (b) of this section that the person is:

- (1) Sitting or lying down on a sidewalk because of a medical emergency;
- (2) As the result of a disability, utilizing a wheelchair, walker, or similar device to move about the sidewalk;
- (3) Operating or patronizing a commercial establishment or service or governmental function conducted on the sidewalk pursuant to a permit or authorization issued under this Code or under the laws of this state;
- (4) Participating in or attending a parade, festival, performance, rally, demonstration, meeting, or similar event lawfully conducted on the public street or a sidewalk;

- (5) Sitting on a chair or bench located on the sidewalk that is supplied by a governmental agency or the abutting private property owner; or
- (6) Sitting or has placed materials on a sidewalk while waiting for public or private transportation or waiting for access to enter any building.

(d) Prior to taking any action to enforce the provisions of this article, any law enforcement officer observing a violation of this article shall first notify the person engaged in the prohibited conduct that he or she is in violation of this article. It is an affirmative defense to a prosecution under this article that any person so notified promptly ceased, within a time reasonable under the circumstances, to engage in the prohibited conduct following such notification.

(Ord. No. 02-504, § 4, 6-12-02)

**Sec. 40-353. Creation of designated areas.**

(a) This section shall govern the creation of a designated area within the city other than the central business district.

(b) Residents of the city may petition the city council to designate any area within the city as a designated area under this article.

(c) Any such petition must meet the following requirements to be considered by the city council:

- (1) Describe the proposed area by street boundaries;
- (2) Contain the signatures of property owners whose property represents 20 percent of the total area to be designated;
- (3) Contain the signatures of at least 100 citizens residing within the proposed area, each of whom was above the age of 18 years old when signing the petition;
- (4) Indicate that the signatures thereon were collected within a 60-calendar-day period; and
- (5) Indicate that the signatories thereon desire the area to be designated as an area subject to this article.

(d) Any such petition must be submitted to the city secretary within 90 calendar days of the date of the first signature thereon.

(e) Following the filing of any such petition with the city secretary, the city council shall, within 45 days of the date of filing, conduct a public hearing to consider the merits of the petition.

(f) The city secretary shall give notice as to the filing of any such petition and the date, time, and place of the city council hearing by posting same at least 14 days in advance of such hearing at a place convenient to the public at the City Hall. Any interested person shall have the opportunity to participate in any hearing conducted under the provisions of this section and to present any relevant evidence and testimony.

(g) The chief of police shall be requested to cause the proposed area to be investigated with regard to the existence of conduct in the proposed area that would be violative of this article if the proposed area were to be designated, along with any incidents of criminal misconduct in the proposed area, and to report the results of such investigation to the city council at or prior to the public hearing.

(h) Following such hearing and upon review of the report of the chief of police, the city council shall establish the designated area as requested if it determines that:

- (1) The petition complies with the requirements of this section;
- (2) The proposed area exhibits the kinds of conduct and adverse impact on use of the sidewalks and adverse impact on adjacent properties that this article was intended to address; and
- (3) Designation of the proposed area would best serve the health, safety, and welfare of the public.

(i) This section shall not be construed to limit the authority of city council consistent with the provisions of this section to designate other areas without a public petition; provided, that the city council receives evidence, substantiated by the police department, that a particular area within