

City of Mesquite ROW & Easement Abandonment Procedure

Revised: June 6, 2012

The procedure to abandon ROW or an easement is as follows:

R.O.W. or easements will only be abandoned if they do not contain City facilities or facilities of a franchised utility company, and if the ROW or easement is not currently being utilized or is determined to no longer be needed for public use. At times portions of easements may be abandoned or abandonment may occur reserving a utility easement, but only if a partial abandonment or such reservation does not hinder the City's ability to maintain its facilities or a utility company's ability to maintain the facilities of the franchised utility company.

Since Right-of-Way (ROW) and easements are dedicated to the City for the public use, action by the City Council is required to abandon a public ROW or easement. City ROW and easements are also utilized by various privately owned utility companies through contractual franchise agreements with the City. Therefore, the franchised utility companies must agree with the abandonment of an easement or ROW.

If all of the requirements set forth in this procedure are met, abandonment will be considered by the City Council by adoption of an ordinance (or other appropriate legal instrument as outlined below) abandoning the affected ROW or easement. Once approved by the City Council, the ordinance and/or other appropriate legal instrument will be filed in the Deed Records of the County where the abandoned property is located.

If a street easement was acquired by plat, the method for abandonment of whatever interest the city acquired will be by council ordinance, which will be filed of record to provide a searchable item in the county land records.

If the easement was acquired as a specific dedication by separate instrument or by prescriptive easement and not by plat, a document that expressly abandons the easement and releases all of the city's interest (a vacating document) must be approved by the city council and these documents *must* be filed at the county records office.

If the city acquired fee simple title, the city must convey it by deed, following all the applicable procedures in the Local Government Code, Section 272.001 et seq.

A pre-application meeting with the City Engineer is highly recommended to look at the specifics and receive initial guidance through the process. The applicant requesting the abandonment must obtain the following information and forward this information to the Engineering Division **as a complete packet**:

- A letter of request from the applicant and all adjoining property owners requesting abandonment of the subject ROW or easement. Where the underlying title to the ROW is in more than one owner, all owners must agree to the abandonment. The City will not be responsible for determinations of ownership and division of property.
- Check made out to the "City of Mesquite" in the amount of **\$500.00** for the administrative processing fee for abandonment of public easements or ROW (per Ordinance No. 3970 – Mesquite City Code Section 1-18).
- A copy of the original ROW and/or easement dedication instrument (usually this is a plat or a separate dedication instrument). Often the Engineering Division or City Secretary's office will have

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copies of the dedication instrument on file and can make copies of the document for the applicant. However, in some cases the Engineering Division or City Secretary will not have copies. In these cases the applicant must do the required research and obtain certified copies of the documents. This research often requires research of the County Records. The Applicant will likely require the assistance of a surveyor, title company, or other land records professional of the applicant's choice in finding the required documents.

- The applicant must have a survey and field notes prepared by a licensed surveyor for the ROW or easement to be abandoned. Often only a portion of the original dedication can be abandoned. The sketch and field notes should reflect only those portions to be abandoned.
- Actual field locations of all City utilities should be recorded by the applicant's surveyors. If the utilities are under or close to a structure these locations should be shown on the sketch of the area to be abandoned, along with the necessary easements. The City Utility Division will aid surveyors in the location of the utilities.
- Letters from all the franchised utility companies indicating they have no objections to the ROW or easement abandonment are required. If the easement contains facilities of the franchised utilities, these facilities should be shown on the sketch. Contact should be made with the respective franchised utility companies to locate their respective facilities.
- In some cases, ROW or easement abandonment will involve the purchase of property or interest therein from the City. In such cases the applicant must have an appraisal done by a **MAI certified appraiser** who is pre-approved by the City. This appraisal will be the basis for determining fair market value of the property to be paid to the City by the applicant. **Contact the City Engineer for specific guidance whether this step is required.**

When the relevant above information has been received by the Engineering Division, the applicant will be notified that the file is complete and ready for City Council action. At this time, the City Engineer will place the abandonment on the City Council agenda, prepare a M&C with recommendation, and inform the applicant of the date and time of the council meeting. Generally this type of item is placed on the consent agenda.

The City Engineer will request preparation of an abandonment ordinance from the City Attorney's office and forward to them the applicable sketch, field notes, and M&C for the abandonment.

The applicant should be present at the City Council meeting in the event the City Council pulls the item off of the consent agenda and wishes to discuss the matter in open session.

Upon City Council approval of the abandonment ordinance the applicant is required to pay to the City the value of the abandonment as determined by the MIA appraisal (if applicable). Once the settlement is received the City finalizes the abandonment ordinance and forwards a copy of the ordinance to the applicant.

Additional copies are given to the Engineering Division for filing in the applicable subdivision file (along with the information assembled by the applicant) and for recording on various City maps.