

ORDINANCE NO. 10-041

AN ORDINANCE OF THE CITY OF GALVESTON PERMITTING RIGHT OF WAY ENCROACHMENT OF BUILDINGS IN EXISTENCE FOR AT LEAST FIFTY YEARS INTO THE CITY'S ALLEY RIGHTS OF WAY FOR DISTANCES OF LESS THAN 6 INCHES TO CONTINUE UNTIL THE STRUCTURE IS REMOVED; RETAINING CITY OWNERSHIP OF THE LAND, PROVIDING FOR AN APPLICATION FEE, INDEMNIFICATION OF THE CITY, REQUIRING ACCEPTANCE BY THE PROPERTY OWNER; AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENCROACHMENT AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Galveston was surveyed and then incorporated in 1839; and,

WHEREAS, many older buildings encroach minimally onto the City's alley rights of way and have done so for over fifty years; and,

WHEREAS, although formerly the law allowed for adverse possession against the City for its alley rights of way; current law does not so provide and,

WHEREAS, whereas, there have been improvements in surveying over the course of time, so that *de minimus* encroachments continue to crop up within the City's alley rights of way; and,

WHEREAS, pursuant to the Transportation Code § 311.001, and Local Government Code § 282,001, home rule cities have control over their streets and alley rights of way; and,

WHEREAS, available alternatives to permitting these long term encroachments, such as licenses to use, are expensive, and abandonments that permanently change the layout of the City's right of way, are undesirable for such long term *de minimus* situations;

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

SECTION 1. That the findings and recitations set out in the preamble to this ordinance are found to be true and correct, and they are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 2. That subject to all provisions set forth herein, and only for the purpose set forth herein, the Department of Planning and Community Development, shall provide an administrative procedure whereby:

- a. When there are no objections by appropriate City Departments or private utilities,
- b. Structures that encroach minimally on the City's alley rights of way for distances of less than 6 inches, which do not intrude over utility, water or sewer lines, and do not interfere with private utilities or otherwise adversely affect the health safety or welfare of the public,
- c. Shall be permitted without annual charge during the time that the structure continues to exist in its current state,
- d. However, if and when the structure is moved, at least 50% destroyed (by value) or demolished for any reason, any new structure shall be constructed within the property boundaries and in compliance with all City regulations,
- e. Ownership of the alley right of way shall at all times remain in the City of Galveston, and
- f. The applicant for such right of encroachment shall agree to indemnify the City for any claims made against it arising out of the encroachment.
- g. The applicant shall pay the administrative fee provided for "encroachment letters" set out in the Zoning Regulations.

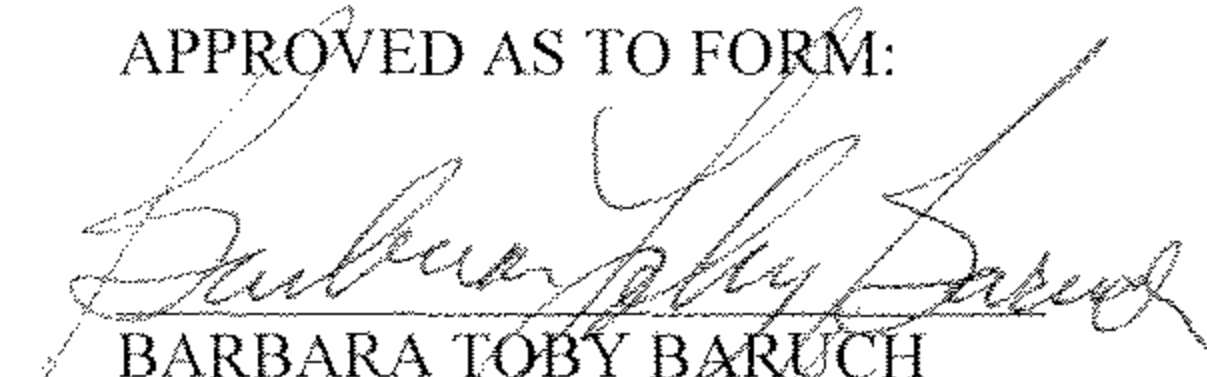
The City Manager is authorized to execute an agreement with the property owner(s) including the above terms under which the right of encroachment may be granted, as approved by the City Attorney.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. In accordance with the provisions of Sections 12 and 13 of Article II of the City Charter this Ordinance has been publicly available in the office of the City Secretary for not less than 72 hours prior to its adoption; that this Ordinance may be read and published by descriptive caption only.

SECTION 5. This Ordinance shall be and become effective from and after its adoption and publication in accordance with the provisions of the Charter of the City of Galveston.

APPROVED AS TO FORM:

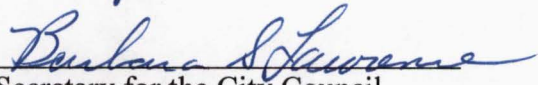

BARBARA TOBY BARUCH
ASSISTANT CITY ATTORNEY

(Certification on following page)

I, Barbara S. Lawrence, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on May 13, 2010 as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this 20th day of May, 2010.




Secretary for the City Council
Of the City of Galveston

(Certification on following page)

I, Barbara S. Lawrence, Secretary of the City Council of the City of Galveston, do hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the City Council of the City of Galveston at its regular meeting held on May 13, 2010 as the same appears in records of this office.

IN TESTIMONY WHEREOF, I subscribe my name hereto officially under the corporate seal of the City of Galveston this ____ day of _____, _____.

Secretary for the City Council
Of the City of Galveston