

ORDINANCE NO. 1139

AN ORDINANCE AMENDING CHAPTER 38, *STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*, OF THE NICHOLS HILLS CITY CODE REGARDING THE CLOSING OF PUBLIC WAYS AND EASEMENTS AND AMENDING THE CITY FEE SCHEDULE TO ADD A FEE FOR APPLICATIONS TO CLOSE A PUBLIC WAY OR EASEMENT; REPEALING ALL CONFLICTING ORDINANCES OR PARTS OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

**EMERGENCY ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NICHOLS HILLS, OKLAHOMA:

Section 1. A new Article is hereby added to Chapter 38, with new language underlined, to wit:

**Secs. 38-253—38-275. Reserved.**

**Article VIII. CLOSING OF PUBLIC WAYS AND EASEMENTS.**

**Sec. 38-276. Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings as ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Close* means a legislative act of the City discontinuing the public use of a public way or easement without affecting title to such real property.

*Easement* means a right in real property as established by the laws of the State of Oklahoma.

*Public way* means the surface, the air space above the surface, and the area below the surface of any public street, road, thoroughfare, alley, or other public right-of-way, including, without limitation, public utility easements dedicated for compatible use within the City.

**Sec. 38-277. Application for closing public way or easement.**

Persons wishing to close a public way or easement shall file a written application to do so with the City Manager on an application form supplied by the City Clerk. The following attachments, and all other information required by the application form, must accompany the application:

(a) A map that reflects (i) the public way or easement sought to be closed (ii) the ownership lines for each owner of record whose name appears on the ownership report required by subsection (e) below, and (iii) the location of the property owned by the owners of more than one-half of the total frontage of the public way or easement sought to be closed who have approved the filing of the closing application as required by subsection (g) below.

(b) A statement of the purposes for which the public way or easement were originally established or given, the present use of the public way or easement, and why the applicant desires that the public way or easement be closed.

(c) If the public way or easement was established by an instrument filed of record with the Oklahoma County Clerk, other than a subdivision plat, a certified copy of that instrument.

(d) If the public way or easement was established by dedication pursuant to a recorded subdivision plat, the name of the subdivision along with its plat number or the book and page of its recordation in the office of Oklahoma County Clerk.

(e) A report certified by a bonded abstractor stating the names and mailing addresses for the owners of records whose property is within a 300-foot radius of the exterior boundary of the public way or easement.

(f) A list of any utility companies or holders of franchise or special permits or privileges in the public way or easement.

(g) An authorization signed by the property owners(s) owning more than one-half of the total frontage of the public way or easement sought to be closed approving the filing of the closing application.

The application will be considered officially submitted and filed only after it is examined by the City Manager or his designee and found to be complete.

**Sec. 38-278. Application fee.**

A nonrefundable fee in the amount established in the City Fee Schedule must be paid to the City by the Applicant with submission of the application for closure of the public way or easement.

**Sec. 38-279. Planning Commission and City Council public hearings; notice of hearings.**

The Planning Commission and the City Council shall each hold public hearings regarding the proposed public way or easement closure as provided in this Article. The City shall arrange for notice of the hearings to be given by publication in a newspaper of general circulation in the City not less than 15 calendar days before the date of the Planning Commission's hearing, and by mailing written notice through the United States Postal Service not less than 20 calendar days before the date of the Planning Commission's hearing to the applicant and to the owners

of record whose property is within a 300-foot radius of the exterior boundary of the public way or easement proposed for closure as their names and addresses appear in the report provided by the Applicant pursuant to Section 38-277 (e). The notice of the public hearings must contain the date, time, and location of each hearing and a description of the public way or easement proposed for closure.

**Sec. 38-280. Planning Commission public hearing and recommendation to City Council.**

The Planning Commission shall hold a public hearing regarding the proposed closure of the public way or easement, and shall provide a recommendation to the City Council, recommending approval, conditional approval, or disapproval of the proposed closure.

**Sec. 38-281. City Council public hearing and proposed closure of the public way or easement approval or disapproval.**

(a) *Public hearing.* The City Council shall hold a public hearing regarding the proposed closure of the public way or easement following receipt of the Planning Commission's recommendation.

(b) *City Council action.* The City Council shall approve, conditionally approve, or disapprove the proposed closure of the public way or easement. If the City Council approves of the proposed closure, the actions set out in subsection (c) shall be taken. If the City Council conditionally approves the proposed closure, the conditions that must be satisfied for full approval must be stated in its decision.

(c) *Action upon City Council approval.* If the City Council approves of the proposed closure of public way or easement, it will do so by ordinance.

**Sec. 38-282. City's reservation of rights to reopen.**

The City shall retain the absolute right to reopen any closed public way or easement without expense to the City and may do so on its own motion, subject to applicable state law.

**Sec. 38-283. Rights of utilities.**

The closing of any public way or easement shall not affect the right to maintain, repair, reconstruct, operate or remove utility, public service corporation, or transmission company facilities of service existing therein, nor shall such closing affect private ways existing by operation of law unless released in writing by the owners thereof.

**Sec. 38-284. Right of City to temporarily close public ways and easements for the safety and welfare of the public, for traffic control, for construction, and for short term community events.**

The City may close public ways and easements temporarily for the safety and welfare of the public, for traffic control, for construction, and for short term community events, and nothing in this Article shall prohibit or restrict the City from doing so.

Section 2. Chapter 3 of the Nichols Hills Code, *City Fee Schedule*, Section 3-3, *Fee Schedule*, is hereby amended, with the addition of the following fees, with new language underlined, to wit:

***Chapter 38. Streets, Sidewalks and Other Public Places.***

Application to close public way or easement ..... \$1500.00

Section 3. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 4. The provisions of this ordinance are severable and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

Section 5. EMERGENCY SECTION. WHEREAS, in the judgment of the Council it is necessary for the preservation of the peace, health, welfare and safety of the City of Nichols Hills, Oklahoma, and of the inhabitants thereof that the provisions of this ordinance be put into full force and effect immediately, and therefore an emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force from and after its passage as provided by law.

PASSED by the Council of the City of Nichols Hills, Oklahoma, on the 10<sup>th</sup> day of July, 2018.

APPROVED by the Mayor of the City of Nichols Hills, Oklahoma, on the 10<sup>th</sup> day of July, 2018.

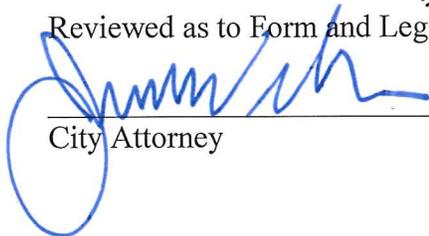
ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor



Reviewed as to Form and Legality:

  
\_\_\_\_\_  
City Attorney