

ORDINANCE 285

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA REVISING AND AMENDING ELKINS CITY CODE §93.070 THROUGH §93.076 REGARDING STREET AND ALLEY ABANDONMENT PROCEDURES**

WHEREAS, the Common Council has previously adopted Ordinance 185 which established a procedure for street and alley abandonment;

WHEREAS, at the time of the adoption of Ordinance 185 one of the Council Standing Committees was the Street Committee; and

WHEREAS, the Council Standing Committees have subsequently been reorganized and the Street Committee has been eliminated and its responsibilities have been assigned to the Municipal Properties Committee; and

WHEREAS, the Common Council has determined that the part of Ordinance 185, now codified as Elkins City Code §93.072 PROCEDURE, referring to the previous Street Committee shall be amended to reflect the change in Standing Committees;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMON COUNCIL OF THE CITY OF ELKINS THAT ELKINS CITY CODE §93.072 BE AMENDED AS FOLLOWS:

**STREET AND ALLEY ABANDONMENT PROCEDURES**

**§ 93.070 LEGISLATIVE INTENT.**

Council finds and declares that within the city there are one or more streets, alleys and public rights-of-way that have not, do not or will not in the future serve any public purpose; that exist only by means of appearance on plats or maps of sections of the city; that it would be in the best interest of the city to abandon and vacate such streets, alleys and public rights-of-way, thereby absolving any actual or contingent liability; and that would otherwise permit more appropriate land use within the city thereby promoting orderly development of the city.

**§ 93.071 AUTHORITY.**

Council, pursuant to the authority granted it by the Charter and the West Virginia Code, reserves the right to close, abandon, discontinue for public use any part or all of any street, alley, land, road or other designated travel way presently owned by or dedicated to the city.

**§ 93.072 PROCEDURE.**

(A) Any landowner whose land abuts on any street, alley, lane, road or other designated travel way seeking to close, abandon, discontinue for public use any part or all of such right-of-way shall file with the City Clerk:

- (1) A petition to Council;
- (2) The petition shall be accompanied by an engineer's or surveyor's map of such right-of-way together with abutting property owners; and

(3) A list of all owners of property abutting on such right-of-way.

(B) Before acting to close, abandon, discontinue for public use any part or all of such right-of-way, the Council shall accept the petition and refer it to **Municipal Properties Committee** to fix a time and place for a public hearing on the petition. Such public hearing shall be held not less than 15 days after the date and place have been so fixed. The **Municipal Properties Committee** shall cause notice of the time and place of such hearing and the purpose thereof to be published as a Class I legal advertisement in compliance with the provisions of W.Va. Code Art. 59-3. The notice shall be published at least 15 days before such hearing. The applicant shall cause to be served, at least 15 days before such hearing, in the manner provided by law for the service of notices and process a notice showing the time, place and purpose of such hearing, upon every owner of property, and every person holding a lien thereon, abutting such street, alley, lane, road or other designated travel way. The affidavit of publication of such notice shall be filed with the **Municipal Properties Committee** at or before the hearing as part of the record in the proceedings. After considering the evidence presented at the public hearing, as well as any other documented evidence which may come before the **Municipal Properties Committee**, the Committee shall report its recommendations to Council at the next Council meeting. The recommendations of the **Municipal Properties Committee** to Council may include a recommendation as to a value to be placed on the right-of-way or portion thereof to be considered for abandonment.

(C) Upon receipt of the **Municipal Properties Committee's** recommendations, Council shall direct the preparation of an ordinance in the manner prescribed by law. Council shall then vote on passage or rejection of the ordinance by a simple majority vote of the members present at a regular or special meeting at which a quorum is present.

#### § 93.073 DEPOSIT OF COSTS; FEES NON-RETURNABLE.

The landowner shall deposit an amount set forth by Council from time to time at the time of the filing of the petition for each quitclaim deed to cover the administrative cost, cost of legal publication, the cost of preparation of the deed, and recordation thereof. No part of the filing fee paid pursuant to this section shall be returnable to the landowner or petitioner.

#### § 93.074 GROUNDS FOR DISAPPROVAL.

Council will not approve an abandonment or vacation of any street, alley or public way under the following conditions:

- (A) If the street, alley or public way serves or is expected to serve any public purpose;
- (B) If any person or property, not consenting to such vacation or abandonment, is found to suffer special damage; and
- (C) If the vacation or abandonment unreasonably impedes the flow of traffic.

#### § 93.075 DIVISION OF ABANDONED PUBLIC WAY.

Unless otherwise agreed by the owners of the property abutting thereon, the street, alley or public way shall be divided along the centerline, and each abutting property owner taking such portion thereof to the centerline.

#### § 93.076 QUITCLAIM DEED.

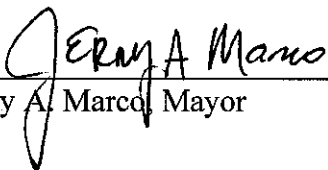
The ordinance vacating and abandoning the street, alley or public way shall provide that the Mayor execute and deliver to the proper party a quitclaim deed for that portion of the street, alley or public way to go to such property owner. Any such quitclaim deed shall reserve all necessary water, sewer and other utility easements.

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

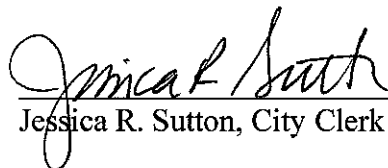
This Ordinance shall become effective upon the date of its final adoption.

**PASSED AND APPROVED ON THE FIRST READING: June 17, 2021.**

**PASSED AND APPROVED ON THE SECOND AND FINAL READING THIS 1st DAY OF July, 2021.**

  
\_\_\_\_\_  
Jerry A. Marco, Mayor

*Attest:*

  
\_\_\_\_\_  
Jessica R. Sutton, City Clerk