

**NOTICE OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS**



MONDAY, JUNE 6, 2011

5:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, June 6, 2011 at 5:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The Tomball City Council reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

- 1.0 Call to Order
- 2.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*
- 3.0 New Business:
 - 3.1 City Council will enter into a Workshop Session to Discuss Possible Revisions to Chapter 70, Plats and the Subdivision of Land
- 4.0 Adjournment

CERTIFICATION

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 3rd day of June 2011 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

Doris Speer
Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Special City Council

Agenda Item

Data Sheet

Meeting Date: June 6, 2011

Topic:

City Council will enter into a Workshop Session to Discuss Possible Revisions to Chapter 70, Plats and the Subdivision of Land

Background:

City Staff has been working with the City Attorney to determine the best way to address Council's concerns regarding the platting requirements for lots that are under one ownership and possibly have structures across existing lot lines. The City Attorney drafted a revision to Chapter 70 - Plats and the Subdivision of Land to allow joinder of lots under common ownership. The draft ordinance is attached for your review.

There are issues and concerns that need to be addressed in order to move forward with the revision to the ordinance. Some of the issues, but not limited too, are as follows:

1. Determine the definition for "joinder lot";
2. Determine the area of the City that would be allowed to have joinder lots;
3. Define the removal of a structure; and
4. Potential Incentive Program (Not yet defined).

Origination:

City Council

Recommendation:

Funding:

Party(ies) responsible for placing this item on agenda:

Engineering and Planning

ACTION TAKEN		
APPROVAL	READINGS PASSED	OTHER
☐ YES ☐ NO	☐ 1 ST ☐ 2 ND	

ATTACHMENTS:

Draft Ordinance to Revise Chapter 70 - Plats and Subdivision of Land

City Council Memo from Attorney

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 70, PLATS AND THE SUBDIVISION OF LAND, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TEXAS, BY AMENDING SUBSECTION (d) OF SECTION 70-3 OF ARTICLE I TO ALLOW JOINDER OF LOTS UNDER COMMON OWNERSHIP WITHOUT REQUIRING A PLAT PROVIDED THAT THE JOINDER OF LOTS DOES NOT REQUIRE THE DEDICATION OR REMOVAL OF ANY PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS OR PUBLIC IMPROVEMENTS; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$2,000 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball is hereby amended by adding to Subsection (d) of Section 70-3, Exceptions, of Article I, Special Provisions, the language underscored below, the amended Subsection (d) to read as follows:

“Sec. 70-3. Special provisions.

* * *

(d) *Exceptions.*

- (3) A division of land does not include the merger of two or more adjoining lots or tracts of land, with common ownership, that the owner(s) wishes to merge into one lot in order to avoid the creation of a technical violation of the City’s building, subdivision and zoning regulations relating to building setback lines. This exception applies only if:
- a. the lots or tracts were under common ownership as of the effective date of this ordinance; and
 - b. the lots or tracts are located in the Old Town and Mixed Use District (OT&MU) as defined by Section 34 of the City of Tomball Zoning Ordinance; and
 - c. a structure used for residential purposes existed on the lots or tracts, as of the effective date of this ordinance, provided, however, that this exception shall not apply in the event that

- fifty-percent (50%) or more of the structure is removed or destroyed; and
- d. the joinder of lots or tracts does not require the dedication or removal of any public rights-of-way, public easements or other public improvements; and
 - e. the owner(s) agrees in writing on a form approved by the City that the merged lot may not be divided in the future unless a subdivision plat authorizing such division is approved by the City and filed of record in accordance with applicable state laws and City Ordinances governing plats and the subdivision of land. The form must also inform and declare that any subsequent purchaser will be bound by the requirements of this exception and the form shall be filed in the County Clerk's office of the County in which the property is located.

Two or more platted lots joined together pursuant to this Subsection shall be considered one (1) joined lot for purpose of this Chapter; provided, however that nothing contained herein shall otherwise constitute an exception to the platting requirements imposed by this Chapter."

Section 2. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 3. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 4. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$2,000.00) dollars for each offense.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE _____ DAY OF _____ 2011.

COUNCILMAN QUINN _____
COUNCILMAN STOLL _____
COUNCILMAN BROWN _____
COUNCILMAN TOWNSEND _____
COUNCILMAN DODSON _____

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE _____ DAY OF _____ 2011.

COUNCILMAN QUINN _____
COUNCILMAN STOLL _____
COUNCILMAN BROWN _____
COUNCILMAN TOWNSEND _____
COUNCILMAN DODSON _____

Gretchen Fagan, Mayor

ATTEST:

Doris Speer, City Secretary

OLSON & OLSON, L.L.P.

Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019
(713) 533-3800

M E M O R A N D U M

TO: Mayor and Council

FROM: Loren Smith, Olson & Olson, L.L.P.

RE: Amendment to Subdivision Ordinance allowing joinder of tracts.

DATE: June 1, 2011

At the request of Council, we have researched various methods to allow persons with a structure built across one or more platted lot lines to obtain a building permit for an addition to or remodel of the structure without the expense of going through the formal platting process. The attached draft ordinance is in response to Council's request.

The draft ordinance amends Subsection (d) of Section 70-3 of the Tomball Code of Ordinances, the City's subdivision regulations, to create an additional exception to the platting requirement. Essentially, the ordinance, if passed, would not require a property owner to replat to obtain a building permit on two or more adjoining tracts of land that the owner wants to merge into one tract to avoid violations of the building, subdivision and zoning regulations of the City related to setback lines. In other words, if a property owner owned two or more adjoining tracts containing a structure built across the lot lines of those two or more tracts, that property owner would not be prevented from obtaining a building permit because the existing structure violated the setback provisions of the building, subdivision and/or zoning regulations.

The draft ordinance also contains some restrictions to the application of this exception. Staff would like Council's feedback on these restrictions. Specifically, those areas of restriction are as follows:

1. **Time.** The ordinance, as drafted, applies only to those tracts under common ownership as of the effective date of the ordinance. Accordingly, according to the draft ordinance, a property owner could not purchase an adjoining tract after the ordinance is adopted and seek to avoid the platting regulations pursuant to this exception. Additionally, the burden would be on the property owner to

demonstrate that the tracts were under common ownership as of the effective date of the ordinance.

2. **Area.** As drafted, the ordinance would apply only to tracts located within the Old Town and Mixed Use District (OT&MU) as defined by the City's zoning regulations. Naturally, the applicable area can be defined as Council desires.
3. **Use.** The ordinance would apply only to residential properties in existence as of the effective date of the ordinance. As with the time restriction, the burden would be on the property owner to demonstrate that the structure in question was in existence and being used for residential purposes as of the effective date of this ordinance. Additionally, the drafted ordinance removes the applicability of the exception if fifty-percent (50%) of the structure is removed or destroyed. If Council determines to place a use restriction such as this on the exception, we would need to determine whether to measure the fifty-percent (50%) of the structure by value, area, or another means.
4. **Dedication.** The draft ordinance also only pertains to those tracts wherein the joinder of tracts does not require the dedication or removal of any public rights-of-way, public easements, or other public improvements.

Procedurally, if a property owner wished to utilize the drafted exception, the property owner would file an affidavit on a form provided by the City stating a desire to join the tracts in question pursuant to this provision of the subdivision ordinance. The affidavit would also be filed with the County Clerk's office notifying any potential purchasers of the property of the joinder of the tracts.

Additionally, if the drafted ordinance is adopted, it would potentially create a group of tracts which do not fall within the definition of "lot" contained within the Subdivision Ordinance. To cure this, any ordinance presented to Council for adoption should also include an amendment to the definition of "lot" to be sure this class of tracts is included within that definition.

Keep in mind that the drafted ordinance does not cure the platting issues involved in the tracts to which the ordinance may apply. At best, it merely postpones them. Additionally, the drafted ordinance may raise questions in the future that would not be presented without the adoption of this ordinance. Nevertheless, this ordinance represents a solution to the problem of not being able to obtain a building permit on these properties without going through the replatting process.