

RESOLUTION NO. 28838

A RESOLUTION TO ADOPT AN UPDATED RIGHT-OF-WAY CLOSURE AND ABANDONMENT POLICY FOR CHATTANOOGA, HAMILTON COUNTY, EAST RIDGE, LAKESITE, RIDGESIDE, WALDEN, AND LOOKOUT MOUNTAIN.

WHEREAS, pursuant to TCA 13-4-104, the Chattanooga City Council is required to review and comment on each request to abandon and close rights-of-way;

WHEREAS, rights-of-way are an important element of our community infrastructure and should be retained where it is at all possible;

WHEREAS, the current policy, adopted on January 13, 1997 by the Planning Commission, needs updating to reflect current terms, practices, and procedures; and

WHEREAS, the policy provides guidance to professional staff, the Planning Commission members, citizens, and elected officials on the standards and criteria for reviewing each request.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby adopting an updated right-of-way closure and abandonment policy for Chattanooga, Hamilton County, East Ridge, Lakesite, Ridgeside, Walden, and Lookout Mountain as follows:

**CITY OF CHATTANOOGA RIGHT-OF-WAY
CLOSURE AND ABANDONMENT POLICY**

1. PURPOSE & INTENT

The purpose of this policy is to give guidance to citizens, staff, and elected officials regarding the closure and abandonment of rights-of-way. It is intended to form a basis of rationale and process for decisions on right-of-way closure and abandonment requests.

Public rights-of-way are a public resource and an integral element in shaping the community. Rights-of-way contain roads and other public services, allow access to, and servicing of, individual properties along its frontage, and provide shape and form to our neighborhoods and to commercial and industrial areas. For these reasons, it is in the public's and the City of Chattanooga's (City's) interest to retain rights-of-way and to give due consideration to right-of-way closure and abandonment.

It is the policy of the Chattanooga City Council to retain rights-of-way for public use and only to recommend the permanent closure and abandonment of rights-of-way when it is demonstrated that the public has no further need or interest to retain the right-of-way and that its abandonment is necessary to achieve a significant private or public interest.

BACKGROUND

On February 4, 1997, the City Council adopted a Right-Of-Way Closure and Abandonment Policy (Resolution 21267). On August 23, 2005, the City Council adopted a Right-Of-Way Closure and Abandonment Policy (Resolution 24532) with operating procedures for the Department of Public Works. The following is an updated version of the City of Chattanooga Right-Of-Way Closure and Abandonment Policy which replaces resolutions 21267 and 24532 to be in alignment with the Chattanooga/Hamilton County Regional Planning Commission Abandonment Policy and with current City department structure.

2. DEFINITIONS (for the purposes of this policy only)

Abandonment- Relinquishing local government's right to use or maintain a public right-of-way. Note: Closed and abandoned right-of-way does not determine ownership of land. Location of the new property lines is determined through a title search and the plat recording process which is the responsibility of the respective property owners.

Acceptance- Agreeing either expressly or by conduct to the act or offer of another that a right-of-way is under public domain.

For purposes of this policy, acceptance of rights-of-way indicates the City has an established interest in it. This interest could have been established by being formally accepted through the subdivision platting process, or acceptance by specific legislative act (i.e., ordinance or resolution).

Rights-of-way, whether maintained by the City or allowed to remain unimproved, may be classified as either having been accepted by the local jurisdiction or it may have been dedicated and offered for acceptance but never actually accepted by the local government.

Alley- A way which affords secondary means of access to abutting property.

Closed- Right-of-way that has been abandoned through city or county ordinance. Note: Closed and abandoned right-of-way does not determine ownership of land. Location of the new property lines is determined through a title search and the plat recording process which is the responsibility of the respective property owners.

Dedication- The transfer of property interests from private to public ownership for a public purpose. The transfer may be of fee-simple interest or of a less than fee-simple interest, including an easement. Note: dedication does not guarantee the acceptance of the right-of-way by the city or county.

Easements - an interest in land owned by another that entitles its holder to specific limited use or enjoyment.

Landlocked- A condition whereby a lot has no frontage on a public right-of-way.

Mandatory Referral- Provisions under TCA 13-4-104 for review of public ways or streets prior to vacating or change of use. The term “Mandatory Referral” is not found in this section however it is understood that the mandatory referral term was derived by this section’s implication that the stated actions are *mandatory* under state law and that the proposals are to be *referred* to the planning commission for action before the legislative body’s consideration. The statutory requirement to submit and make recommendations on public projects, including the widening, narrowing, relocation, vacation, change in the use, acceptance, acquisition, sale or lease of any street or public way, ground, place, property or structure is required by TCA Section 13-4-104.

Right-Of-Way- The strip of land over which is built, or proposed to be built, a public way. In addition to the roadway, it typically incorporates the curbs, lawn/planting strips, sidewalks, lighting and drainage facilities, and may include special features such as grade separation, landscaped areas, viaducts, and bridges. The presence or absence of these elements within public right-of-way does not necessarily imply the City is responsible for construction or maintenance of those elements.

Streets- A way that affords primary access to an abutting property.

Temporary Use - The non-permanent use of the City ROW or property for the purpose of placing an obstruction or encroachment on or over the public ROW or property; obstructions or encroachments must be removable upon 30 days written notice from the City.

Way- A street, alley, or other thoroughfare or easement permanently established for passage of persons or vehicles.

3. CLASSIFICATION TIERS

Rights-of-way will be reviewed under the following tiered classifications:

Tier 1: The rights-of-way are dedicated for public use and maintained by the City. They are physically open and in use by the public. These rights-of-way provide a full level of service to the abutting property owners or to utilities. They include any elements of a normal road, which may include but are not limited to, road pavement, sidewalks, curbs, storm drainage systems, sanitary drainage systems, water distribution systems, fire

hydrants, utilities (electric, telephone, cable television, gas), provision for future utilities, streetlights, and trees.

POLICY: These rights-of-way will not be closed or abandoned unless a suitable replacement is provided. Applications for closure and abandonment of the rights-of-way will be reviewed using the review factors and according to the tenets of this policy.

Tier 2: These rights-of-way are dedicated for public use but are not maintained by the City. They are not physically open or only partially opened. These rights-of-way provide limited access to the abutting property owners or to utilities or are directly connected to a Tier 1 right-of-way.

POLICY: Applications for closure and abandonment of these rights-of-way will be reviewed using the review factors and according to the tenets of this policy.

Tier 3: These rights-of-way are dedicated for public use but are not maintained by the City. They are not physically open and provide no access to the abutting property owners or to utilities.

POLICY: Applications for closure and abandonment of these rights-of-way will be reviewed using the review factors and according to the tenets of this policy.

Note: The primary focus of rights-of-way to be closed/abandoned will be the rights-of-way currently identified as “Unopened” that fall in the Tier 2 or Tier 3 category.

4. REVIEW FACTORS

The evaluation of a closure and abandonment request is based on the following review factors:

1. Width of right-of-way.
2. Presence of or potential for the location of utilities.
3. Currently open to vehicular, bicycle, or pedestrian traffic.
4. Potential for future use or which provides future connections to the existing street pattern or could provide needed services, and which are integral to the community’s future development (i.e, access to abutting property, bypass for other streets, parking, pedestrian connectivity, etc.).
5. Type/conditions of surface.
6. Does the topography/grade impede the potential use of a right-of-way for vehicles, bicycles, or pedestrians?
7. Will the closure and abandonment landlock any property. If so, has a subdivision plat been submitted which eliminates this situation?
8. Identification of a suitable replacement.

5. **PROCESS**

Application. The Regional Planning Agency (RPA) will accept petitions for closure and abandonment of any right-of-way created by plat, by deed or by drawing, by ordinance/resolution and which are of public record according to the tenets of this policy.

Review. Rights-of-way will be reviewed by various public agencies, City departments, utility companies, and the Chattanooga Department of Transportation (CDOT) according to the tenets of this policy to determine its current use and its potential for future development.

Planning Commission. The Chattanooga-Hamilton County Regional Planning Commission will review and make a recommendation to the Chattanooga City Council according to the tenets of this policy and the recommendations of the reviewers.

City Council. Based on the recommendation of the planning commission and CDOT, City Council will take final action to approve or deny a right-of-way closure and abandonment.

ADOPTED: November 8, 2016

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