

ORDINANCE NO. 231

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, GRANTING TO COMPASS BANK, AN ALABAMA BANKING CORPORATION, THE RIGHT TO USE, ERECT, MAINTAIN, REPAIR, OPERATE, PAVE, MARK, REGULATE AND SUPERVISE PUBLIC PARKING FACILITIES IN, OVER, ALONG, ACROSS AND UPON THAT CERTAIN PUBLIC RIGHT OF WAY KNOWN AS SEA WAY STREET IN THE TOWN OF CINCO BAYOU, FLORIDA, IN CONJUNCTION WITH AND ADJACENT TO GRANTEE'S MAINTENANCE AND OPERATION OF A BANKING INSTITUTION, FOR A PERIOD OF TEN (10) YEARS, WITH AN OPTION FOR GRANTEE TO EXTEND THE FRANCHISE FOR TWO (2) TEN (10) YEAR TERMS, AND PRESCRIBING CERTAIN TERMS AND CONDITIONS UNDER WHICH SAID CORPORATION IS TO OPERATE SAID FRANCHISE, AND PROVIDING FOR THE EFFECTIVE DATE HEREOF

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA, AS FOLLOWS:

SECTION 1: In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified the right, privilege and authority is hereby granted to Compass Bank, an Alabama banking corporation (hereinafter referred to as the "Grantee"), its successors, transferees and assigns, to use, erect and maintain, repair, operate, pave, mark, regulate, and supervise public parking facilities in, over, along, across and upon portions of that certain public right-of-way known as Sea Way Street (more specifically described hereinafter) in the Town of Cinco Bayou, Florida (hereinafter referred to as the "Town") adjacent to Grantee's maintenance and operation of a banking institution for a period of ten (10) years, subject to the conditions hereof.

SECTION 2: That certain parcel of land which is the subject of this grant is described as follows, to wit:

Beginning at a point where the East right-of-way line of Sea Way Street intersects the high water mark of Five Mile Bayou; thence run South along the East right-of-way line of said Sea Way Street to a point on the South right-of-way line of a ten foot alley separating the property owned by Grantee and Hardee's; thence run West 30 feet; thence run South to a point on the North right-of-way line of Lucille Street; thence run West 50 feet along the North right-of-way line of Lucille Street to the West right-of-way line of said Sea Way Street; thence run North along the West right-of-way

line of Sea Way Street approximately 351 feet to a point where the West right-of-way line of Sea Way Street intersects the high water mark of Five Mile Bayou; thence run Easterly along the high water mark of Five Mile Bayou to the point of beginning. All lying and being in Cinco Bayou, Okaloosa County, Florida.

SECTION 3: Grantee shall maintain the pavement and striping on that parcel of land which is the subject of this grant and mark it for parking and regulate and supervise parking thereon, and erect any parking signs necessary. The Grantee shall at all times hold the described property open to and for the benefit of the public.

SECTION 4: A minimum of a 20 foot strip through the described property from North to South shall be left open to provide access for the public to and from Five Mile Bayou. Nothing shall be erected or maintained within such strip which would materially impair such public access.

SECTION 5: In conjunction with the above granted right, privilege and franchise, the Grantee shall have the right to pave and use, along with the public, the ten (10) foot alley adjoining Grantee's property on the South side for access purposes. All duties and obligations imposed hereinafter in Sections 9, 10 and 11 shall apply to the subject of this Section.

SECTION 6: The right, privilege and franchise hereby granted is granted for a period of ten (10) years from and after the effective date of this ordinance and shall cease and terminate at the expiration of such time and at the end of said period, unless if the Grantee exercises the option to extend this franchise as hereinafter granted to the Grantee. The Grantee shall have the option and the right to extend its franchise for two (2) additional terms of ten (10) years each under the same terms and conditions contained herein.

SECTION 7: The Grantee shall pay to the Town Five Hundred Dollars (\$500.00) per year, together with applicable Florida state leasing sales tax, during each year of the term of this franchise, as further consideration for the granting of the rights, privileges and franchise granted hereby. Said franchise fees shall be paid in advance annually during each year of the initial ten (10) year term and for each year of any renewal option terms exercised by the Grantee.

SECTION 8: No fee, tax or charge for use or parking in the public parking facilities to be maintained and operated by Grantee shall be levied against any user of such facilities, without the express written consent of the Town Council of Cinco Bayou, Florida.

SECTION 9: The Grantee shall make good to the Town all damages to the property of the Town from maintenance, repair or operation of the public parking facilities contemplated herein and shall make good to every owner of property abutting on the described property, or which shall be injured by the work or operation thereof, all physical damage which shall be done to such abutting or injured property through an act or omission of the Grantee or of any contractor, sub-contractor or other person in the course of any employment on the repair or maintenance operation of the public parking facilities or any part thereof.

SECTION 10: In the maintenance, repair and operation of the public parking facilities contemplated herein, Grantee shall use all necessary care to avoid doing or permitting to be done any damage to the water lines, sewers, conduits or any other property of the Town and shall use all reasonable care to avoid injury to the property of the Town and shall use all necessary care to avoid doing or permitting to be done any unnecessary damage to the trees located within the described property or the waters adjacent to the described property; and if it shall in its work do or permit to be done any such damage, Grantee shall promptly restore the property so damaged to the condition in which it was before being damaged or pay therefor and shall also be liable for any other damages which may accrue because of said damage to said Town or any other person, firm or corporation.

SECTION 11: The Grantee shall hold the Town of Cinco Bayou, Florida, safe and harmless from all damages or claims for damages arising by reason of the negligence in maintaining, repairing or operation of the said public parking facilities.

SECTION 12: Whenever in this ordinance either the Town or the Grantee is named or referred to, it shall be deemed to include their respective successor(s) or assigns of either and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of said successor(s) or assigns of Town or of the Grantee.

SECTION 13: Should any section, clause or provision of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the ordinance in whole or in part thereof other than the part declared invalid.

SECTION 14: The Grantee, its successors and assigns, shall, within thirty (30) days after the final passage of this ordinance, file a written acceptance thereof with the Town Clerk.

SECTION 15: The Town hereby consents that the Grantee may transfer this franchise to anyone it selects. However, such transfer shall not act as a release of the original Grantee's obligation with regard to any monetary payments due to the Town that arise under this grant.

SECTION 16: Upon termination of this franchise, Grantee shall make such repairs and re-paving at its expense in such a manner as to conform Sea Way Street with the remainder of the streets in the Town of Cinco Bayou existing at the time of such termination.

SECTION 17:

This ordinance shall take effect upon acceptance by the Grantee, its successors or assigns or thirty (30) days after its final passage, whichever occurs first.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA ON THIS 12th DAY OF JUNE 2014.

ATTEST:

THE TOWN OF CINCO BAYOU, FLORIDA

BY: Nell Dykes
Nell Dykes, Town Manager/Clerk

BY: Jean K. Hood
Jean Hood, Mayor



ACCEPTED:

COMPASS BANK, an Alabama banking corporation

BY: [Signature]
Print Name: Robert Fellers
Title: Senior Vice President

The form and legal sufficiency of the foregoing has been reviewed and approved by the Town Attorney.

[Signature]
C. Jeffrey McInnis, Town Attorney