

ORDINANCE NO. 155

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, OKALOOSA COUNTY, FLORIDA GRANTING TO JASCO, A CORPORATION, THE RIGHT TO USE, ERECT, MAINTAIN, REPAIR, OPERATE, PAVE, MARK, REGULATE AND SUPERVISE THE PARKING FACILITIES IN, OVER, ALONG, ACROSS AND UPON THAT CERTAIN PUBLIC RIGHT-OF-WAY KNOWN AS SEA WAY IN THE TOWN OF CINCO BAYOU, OKALOOSA COUNTY, FLORIDA, IN CONJUNCTION WITH AND ADJACENT TO THE GRANTEE'S PLACE OF BUSINESS, FOR A PERIOD OF TWENTY (20) YEARS, WITH AN OPTION FOR THE 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 AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, OKALOOSA COUNTY, FLORIDA:

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 Jasco, a Florida Corporation, hereinafter referred to as the "grantee", its successors, transferees and assigns, to use, erect and maintain, repair, operate, pave, mark, regulate and supervise parking facilities in, over, along, across and upon portions of that certain public right-of-way known as Sea Way (more specifically described hereinafter) in the Town of Cinco Bayou, Okaloosa County, Florida, in conjunction with and adjacent to the grantee's operation of Fast Food Restaurant/Drive-In business for a period of twenty (20) 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 at the intersection of the East right-of-way line of Sea Way and the South right-of-way line of a nine (9) foot alley separating the properties owned by First Federal Savings Bank and Hardee's, thence run West 30 feet; thence run South to a point on the North right-of-way line of Lucile Street; thence run South along the East side of the Sea Way concrete curb for approximately 155 feet to a point 20 feet West of the Southwest corner of Lot 8, Block 3; thence East to the Southwest corner of Lot 8, Block 3; thence North along the east right-of-way line of Sea Way to the point of beginning. All lying and being in the Town of Cinco Bayou, Okaloosa County, Florida.

SECTION 3. Grantee shall pave that parcel of land which is the subject of this grant and mark it for parking. Grantee shall further maintain said pavement and regulate and supervise parking thereon, and erect any parking signs necessary.

SECTION 4. The right, privilege and franchise hereby granted is granted for a period of twenty 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, except if the grantee exercises the option hereinafter granted to the grantee. The grantee shall have the option and the right to extend its franchise for two additional terms of ten years each under the same terms and conditions contained herein.

SECTION 5. There shall be no further consideration for the granting of the rights and privileges and franchise granted hereby other than those hereinabove recited during the initial twenty-year term of this grant. However, if the option for the ten-year renewal terms is exercised by the grantee, the grantee shall pay to the said Town of Cinco Bayou One Hundred Dollars (\$100.00) per year as further consideration for the granting of the rights, privileges and franchise granted hereby. Said annual franchise fee shall be paid in advance for each year on or before the beginning of the franchise year.

SECTION 6. No fee, tax or charge for use or parking in the parking facilities to be constructed, 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 7. The grantee shall make good to the Town all damages to the property of the Town from construction or operation of the 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 construction or operation thereof, all physical damage which shall be done to such abutting or injured property owner 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 construction or operation of the parking facilities or any part thereof.

SECTION 8. In the construction, maintenance, repair and operation of the 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 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 the Town or any other person, firm or corporation.

SECTION 9. The grantee corporation shall hold the said Town of Cinco Bayou, Florida, safe and harmless from all damages or claims for damages arising by reason of the negligence in constructing or maintaining or operation of the said parking facilities.

SECTION 10. Whenever in this ordinance either the Town of Cinco Bayou or the grantee corporation is named or referred to, it shall be deemed to include their respective successor, successors or assigns of either and all rights, privileges and obligations herein conferred shall bind and inure to the benefit of said successor, successors or assigns of said Town or of the grantee.

SECTION 11. Should any section, clause, or provision of this ordinance be declared invalid by a court of record, the same shall not affect the validity of the ordinance in whole or in part thereof other than the part declared invalid.

SECTION 12. The grantee, its successors and assigns, shall within thirty days after the final passage of this ordinance file a written acceptance thereof with the Town Manager/Clerk.

SECTION 13. The Town of Cinco Bayou, Florida, hereby consents that the grantee corporation may transfer this franchise, however the right to assign shall be restricted to a successor in interest of either the business operations or the property and such transfer shall be with the written approval of the Town Council. In the event the grantee fails or refuses to transfer this franchise to the successor in interest, this franchise authorization is automatically terminated. In addition, such transfer shall not act as a release of the original grantees' obligation with regard to performance or any monetary payments due to the Town that arise under this grant.

SECTION 14. 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 with the remainder of the streets in the Town of Cinco Bayou existing at such termination.

SECTION 15. The grantee shall acquire all state and county permits necessary for the exercise of the rights granted under this franchise and necessary for grantee's construction, maintenance and operation of the intended parking area.

SECTION 16. This ordinance shall take effect upon acceptance by the grantee, its successors or assigns or thirty days after its final passage, whichever occurs first.

ADOPTED this 23RD day of SEPTEMBER 1993:

APPROVED:

Charles R. Reynolds
MAYOR



ATTEST:

Ann B. Boudry
TOWN CLERK