



COUNCIL AGENDA STATEMENT

Meeting Date: September 8, 2015

To: Honorable Mayor and Council Members

From: George Garrett, Deputy City Manager / Planning Director

Through: Mike Puto, City Manager

Agenda Item: **Ordinance 2015-08** Repealing Chapter 26, Article 1 Of The City Code Of Ordinances; Providing For The Adoption Of A New Article 1, Entitled “Abandonment Of Right-Of-Way,” To Include New Procedures For Abandonment Of City Owned Right-Of-Way, Provisions For Definitions, General Procedures, Application Fees, Petition Application Procedures, Review Of Petition, Notice Of Intent, And Review By The City Council; Providing For Severability; Providing For The Repeal Of All Ordinances Or Parts Of Ordinances Found To Be In Conflict, And Providing For Inclusion In The Code; And Providing For An Effective Date.

BACKGROUND & JUSTIFICATION:

The City Council reviewed its Ordinance concerning the abandonment of public rights-of-way within the City of Marathon. The Council determined that the Ordinance lacked detail and specificity relating to the process to petition for and receive approval of requests to abandon City owned rights-of-way. Council felt that the application requirements should be clarified and that approval criteria needed to be strengthened. In addition, Council determined that staff should develop a mechanism to seek fair compensation for the property owners and citizens of the City for lands thus abandoned to private citizens through the abandonment process.

The proposed Ordinance does the following:

Repeals the existing Ordinance, Chapter 26-1 “Abandonment of Right-Of-Way”
Adopts a new Ordinance, Chapter 26-1 – “Abandonment of City Rights-Of-Way”
Provides Sections including:

- Declaration of Jurisdiction
- Definitions
- General Provisions
- Petitioners
- Application
- Petition and Application Procedures
- Review of Petition
- Notice of Intent
- Review by the City Council

Most notably the Ordinance originally provided for “privilege fees” which would be assigned to the petition site (area requested for abandonment) as eighty percent (80%) of land value of the petition site as follows:

Further review of case law on the matter indicates that a requirement of payment for Right Of Way (ROW) areas that the City does not own in fee simple is not allowed. Therefore, staff has made revisions to reflect this, removing the “privilege fee” sections. Though Council had indicated that they wanted to be able to charge a fair value for abandoned ROW, this obviously is not possible. However, the overall revision to Chapter 26 concerning abandonment is seen by staff as worthwhile effort. The Ordinance is thus tightened up and made more clear in future abandonment proceedings.

CONSISTENCY CHECKLIST:

	Yes	No
1. Comprehensive Plan	_____	_____
2. Other –Sewer Mandate	_____	_____

FISCAL NOTE:

NA

APPROVED BY FINANCE DIRECTOR:

RECOMMENDATION:

Approval of Ordinance 2015-08

Sponsored by: Zieg
Introduction Date: July 20, 2015
Public Hearing Dates: July 20, 2015
July 28, 2015
August 11, 2015
Enactment date: September 8, 2015

**CITY OF MARATHON, FLORIDA
ORDINANCE 2015-08**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA REPEALING CHAPTER 26, ARTICLE 1 OF THE CITY CODE OF ORDINANCES; PROVIDING FOR THE ADOPTION OF A NEW ARTICLE 1, ENTITLED “ABANDONMENT OF RIGHT-OF-WAY,” TO INCLUDE NEW PROCEDURES FOR ABANDONMENT OF CITY OWNED RIGHT-OF-WAY, PROVISIONS FOR DEFINITIONS, GENERAL PROCEDURES, APPLICATION FEES, PETITION APPLICATION PROCEDURES, REVIEW OF PETITION, NOTICE OF INTENT, AND REVIEW BY THE CITY COUNCIL; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES FOUND TO BE IN CONFLICT, AND PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 177.101, Florida Statutes, authorizes and empowers the City, in its discretion, to vacate, abandon, annul, discontinue and close any existing public or private street, alleyway, right of way, or easements or subdivision plat, or any portion thereof, other than a State or Federal highway, and to renounce and disclaim any rights of the City and the public in and to any land in connection therewith, whether the same was acquired by purchase, gift, devise, dedication or prescription; and

WHEREAS, Chapter 166, *Florida Statutes*, grants the City of Marathon (the “City”) broad municipal home rule powers to provide for the health, safety and welfare of its residents, business owners and visitors by enacting business regulations for the protection of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

~~Strikethrough~~ = deletion **bold underline** = addition

Section 1. The above recitals are true, correct, and incorporated herein by this reference.

Section 2. Chapter 26, Article 1, Section 26.1, - “Abandonment of Right-Of-Way,” of the City of Marathon Code of Ordinances is hereby repealed. As provided below, a new Ordinance shall be inserted entitled, “Abandonment of City Rights-Of-Way” to read as follows:

Article 1 - Abandonment Of Right-Of-Way.

Section 26-1 Declaration Of Jurisdiction And Control Of The City Council Of The City Of Marathon, Florida.

(1) Any dedication or conveyance of real property to the public for the purpose of streets, rights-of-way, access, ingress and egress, utilities and drainage which is made on or by a plat, easement, deed, or other instrument of any kind which instruments are approved by the City or its predecessors in authority for filing of record in the Public Records of Monroe County or which instruments conveys any interest in real property to the City of Marathon is hereby deemed to be under the jurisdiction and control of the City for the purposes of the vacation, annulment and/or abandonment of plats or portions thereof, rights- of-way, and easements for utility and drainage purposes.

(2) The provisions of this ordinance shall apply to all plats, rights-of-way and easements under the jurisdiction and control of the City of Marathon, Florida.

(3) The procedures set forth in this Ordinance shall apply to applications pursuant to 177.085 particularly and generally to 177.101, Florida Statutes as that Section would apply to the abandonment of City rights-of-way.

Section 26-2 Definitions.

Abandon: The term abandon, and any variant thereof, shall be deemed to include the terms “vacate” and “annul.”

Abutting property: Any parcel of real property which shares a common property boundary, or part thereof, with the petition site. An Abutting property must share at least a common point of intersection with the petition property.

Affected property: Any parcel of real property, or portion thereof, which lies within three hundred feet (300) of the boundaries of the petition site.

City: The City of Marathon, Florida and its City Council. The City shall also include the City Manager as defined under its Charter or his/her designee.

City right(s)-of-way: Any right(s) of way acquired by the County or the public by virtue of a dedication to the public or the County on a plat by separate instrument of conveyance, or by prescription.

Owner: That person, governmental entity, or business entity which is the fee simple title holder of real property.

Petition Site: Any parcel of real property subject to a petition for abandonment pursuant to this Ordinance.

Petition: The form prescribed by the City which requests the abandonment of right of way or public easement pursuant to this ordinance.

Petitioner: The person(s), governmental entity or business entity submitting a petition for abandonment pursuant to this ordinance. The term petitioner shall include "co-petitioner" where appropriate. As this Ordinance only provides a mechanism for the abandonment of City rights-of-way, as herein defined, other than government entities seeking abandonment, all petitioners shall be owners of abutting property.

Plat: Any drawing of real property made and recorded pursuant to Chapter 177, Florida Statutes or the ordinances of the City of Marathon, Florida.

Public Records: The records filed in the Office of the Clerk of the Circuit Court in and for Monroe County, Florida.

Right of way: Any strip of land dedicated or deeded for ingress and egress or access purposes. The term shall include the terms "road," "highway," "alley," "access-way," and any other similar term.

Utility Company: Any public or franchised entity which provides electrical, potable water, stormwater, wastewater, communication, or similar services.

Section 26-3 General Provisions

(1) Approval of Abutting Property Owners

As part of the submittal process, documentation is required that there are no objections from abutting property owners. In the event that such an objection occurs, then the Petitioner may further petition to be heard by the City Council in a review which would require a super majority vote if approved.

(2) Access To Water.

No right of way, road, Street, or public accessway giving access to any publicly accessible waters in the City of Marathon, Florida, shall be closed, vacated or abandoned unless:

a. the City Council determines at a public hearing that the petitioner meets all of the review criteria of this Article; and

b. only in those instances wherein the Petitioner(s) offers to trade or give to the City comparable land or lands for a right of way, road, street or public accessway to give access to the same body of water, such access to be of such condition as not to work a hardship to the users thereof, the reasonableness of the distance and comparable land being left to the discretion of the City.

(3) Result of Approved Petition For Abandonment

a. Upon approval of a request for abandonment of City right-of-way, the petition site shall be surveyed so as to divide equal interest in area among abutting property owners based upon the front footage of respective abutting properties. As is customary for City right(s)-of-way with abutting owners on opposite sides of said City right-of-way, the right-of-way is "split down the middle" to be dispersed in equal area to the abutting properties on opposite sides. In situations with more complex geometries, an equitable share shall accrue to abutting owners using common survey criteria such as the centroid, center line, or other focal point or line which characterizes the petition property.

b. Reversionary Provisions of Plat. Should the petition site be subject to such reversionary clauses as prescribed under 177.085, "Platted streets, reversionary clauses," then the equitable division of the petition site shall be determined based on the reversionary provisions of the plat from which the City right-of-way was originally derived.

Section 26-4 Petitioners.

(1) Petitions for abandonment of right(s)-of-way - any person, governmental entity or business entity desiring to abandon the public's interest in and to any right of way shall be required to make application to the City pursuant to this ordinance. Said application shall be on a form approved and provided by the City. Unless initiated by the City, any petition for abandonment of rights-of-way shall only be made by an abutting property owner.

Section 26-5 Application Fee.

(1) Application fee - except as provided herein, each petition shall be accompanied by a fee of one thousand dollar (\$1,000.00), an amount which may be adjusted from time to time by the City, to cover the cost of administrative review, site analysis and investigation, publications, and official recording. No refund of the application shall be made. Petitions of the City or any other governmental agency shall be exempt from the application fee.

(2) The City may reject a petition if a petition covering the same lands had been considered at any time within six (6) months of the date the later petition is submitted.

Section 26-6 Petition Application Procedures.

In addition to any other information required by the City, the petition shall contain the following:

(1) Legal description of Petition Site - a complete and accurate legal description of the Petition Site.

(2) Type of petition - a statement describing the extent of abandonment sought, whether in public right-of-way, the public's interest in a private right of way or in a public easement. The statement shall identify the source of the City's interest together with a reference to the recording information for same, in and to the Petition Site.

(3) Survey - a certified land survey measuring no less than 8 ½ X 14" and no larger than 11" x 17" shall be prepared by a Florida registered land surveyor in accordance with the minimum technical standards of Section 472.027, Florida Statutes and Chapter 5J-17, Florida Administrative Code, and attached as an exhibit to the petition. The survey shall also contain or depict the following information:

a. An accurate scaled survey of the Petition Site;

b. The immediate boundaries of abutting properties;

c. The square footage of the Petition Site; and

d. Existing structures, utilities, easements, encroachments and other improvements, including but not limited to the location of overhead, underground or surface utility lines and equipment, ditches, fences, buildings, pathways, and drainage structures contained on the Petition Site.

(4) Location map – an aerial graphic measuring not less than 8 ½" x 14" and no larger than 11" x 17" which clearly and legibly identifies the location of the Petition Site in relation to the nearest public right of way, excluding the Petition Site, and all affected properties. The location map may be located on the survey in a separate block.

(5) List of owners of affected property - a complete list of all owners of affected property, their mailing addresses and legal description of the property owned. A spreadsheet or mailing labels of each owner shall be provided. All owners of abutting property shall be so designated on this list. The list shall be obtained from the Monroe County Property Appraiser's office.

a. The written consent of ALL abutting property owners is required in order for the acceptance and processing of any Petition. Exceptions are considered as provided in Section 26-3 (1), and for petitions and petition sites that involve plat reversionary clauses under circumstances that not all of the abutting properties are a part of the plat in question and therefore do not fall under the revisionary clause for the plat. Such circumstances will require additional review pursuant to 177.085 F.S. and may involve review under the provisions of Section 26-3 (1) above.

(6) Utility approvals - the written approval or consent of any Utility Company providing service to or within the Petition Site shall be attached to the petition. In the case of any petition affecting wastewater, drainage easements or other water management systems, the written approval or consent of the City's Utility Department shall also be attached to the petition. Easements for such consent may be finalized during the abandonment process, but no later than the date of recordation for any approval for right-of-way abandonment granted by the City.

(7) Access to affected property - the petition shall contain a statement that to the best of the Petitioner's knowledge, the granting of the petition would not affect the ownership or right of convenient access of persons owning other parts of the subdivision.

(8) Federal or State highway statement - the Petitioner shall certify that the Petition Site or any portion thereof, is not a part of any State or Federal highway and was not acquired or dedicated for State or Federal highway purposes.

(9) Evidence of title - the petition shall state the source of petitioner's ownership or interest in and to the Petition Site and a reference to the recording information for same. A copy of the source instrument shall be certified by the Clerk of the Circuit Court and attached to the petition.

(10) Evidence of taxes paid - the petition shall state that all state, municipal and county taxes on the Petition Site have been paid. The certificate(s) of the Tax Collector's Office showing payment of same (as payment is defined in Section 177.101(4), Florida Statutes) shall be attached to the petition. If the Petition Site or any portion thereof is tax-exempt, the petition shall so state and a copy of the tax roll from the Tax Collector's Office which shows such exemption shall be attached to the petition.

(11) Justification - the petition shall detail the relevant reasons in support of the request and granting of the petition. Said justification shall be based upon the criteria established in Section 26-7, "Review of Petition."

Section 26-7 Review Of Petition.

(1) Review by Technical Review Committee - each petition shall be reviewed by the City and any governmental agency or City department deemed affected by the petitioner's request. Upon receipt of receipt of a complete and sufficient petition, the City shall distribute the petition to appropriate reviewing departments and agencies. Within thirty (30) days, the City will hold a meeting of the Technical Review Committee (TRC) meeting pursuant to Chapter 101, Article 4 of the City's Land Development Regulations (LDRs). Within fifteen (15) days of the date of the TRC meeting, a report of objections, recommendations, or conditions shall be forwarded to the Petitioner for their review and action as may then be necessary. Within ninety (90) days of receipt of notification from the TRC, the Petitioner shall comply with, agree and commit in writing to the conditions, or disagree in writing to the conditions. Failure to respond to Notification from the TRC shall result in a recommendation to deny the petition to the City Council.

(2) Review Criteria - Upon review of the application, and prior to a public hearing before City Council, the chairperson of the TRC shall submit to City Council a written report recommending approval, approval with conditions or denial of the proposed right-of-way abandonment. This report shall take into consideration the following criteria:

- a. Whether the proposed abandonment will adversely affect the operations and functions of the City;
- b. Whether the proposed abandonment will adversely affect public access to and from the water;
- c. Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within 300 feet of the right-of-way to be abandoned;

- d. Whether the proposed abandonment will adversely affect a public view corridor;
- e. Whether the proposed abandonment will deprive other property owners of access to and from their property; and
- f. Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

Section 26-8 Notice Of Intent.

(1) Within thirty (30) days of a determination by the TRC that the petition for abandonment is competent for review by the City Council, the City shall cause the Petitioner to publish a Notice of Intent in a newspaper of general circulation in the City once weekly for two consecutive weeks, pursuant to the Notice requirements of Chapter 166, F.S. and Chapter 102, Article 2 of the LDRs. Such Notice of Intent shall state the intent of the City to consider the petition pursuant to this Ordinance and, in the case of plat abandonment, or any portion thereof, Chapter 177. Florida Statutes.

Section 26-9 Review by the City Council.

(1) The chairperson of the TRC shall forward the petition together with his findings and recommendations of same to the City Council for their review in accordance with this sub-section and criteria established herein. This shall only be done if conditions are not imposed or if conditions imposed by the TRC are responded to by the Petitioner in the manner set forth above.

- a. At the public hearing, the City Council shall consider the application and relevant support materials, the recommendation of the TRC, criteria established in Section 26-7 (2) and public testimony given at the hearing. If at any time during the public hearing the City Council determines that the application is based upon incomplete or inaccurate information or misstatements of fact, it may deny the application or refer the application back to the TRC for further review and revise recommendations.
- b. At the close of the public hearing, the City Council by not less than a majority of a quorum present shall by resolution, grant, grant with conditions, or deny the application.

Section 3. All other existing provisions of Chapter 26, Article 1 of the Code of Ordinance of the City of Marathon, Florida shall be renumbered accordingly.

Section 4. The Provisions of the Code of Ordinances, City of Marathon, Florida and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. The provisions of this Ordinance are declared to be severable, and if any sentence, section, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance, but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. It is the intention of the City Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Marathon Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. This Ordinance shall be effective immediately upon final adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8th DAY OF SEPTEMBER, 2015.

THE CITY OF MARATHON, FLORIDA

Chris Bull, Mayor

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

Diane Clavier, City Clerk
(City Seal)

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

David Migut, City Attorney

