

ORDINANCE NO. 02-09-15

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA
AMENDING PROVISIONS OF ARTICLE I OF CHAPTER 16 OF
THE CITY CODE, CONCERNING THE PROCEDURES FOR
ABANDONING CITY OWNED RIGHT-OF-WAY; PROVIDING
FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE
CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, there is no existing provisions in the City Code (the "Code") of the City of Marathon, Florida (the "City") for abandonment of right-of-way where the road terminates in water; and

WHEREAS, the City Council wishes to provide a method for the abandonment of right-of-way where the road terminates in water.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:¹

Section 1. **Amendment to the Code.** Section 16-1 of the City Code² is hereby amended to read as follows:

Sec. 16-1. Abandonment of Right of Way.

(a) No dedicated and accepted right-of-way in the ~~County~~ City can be abandoned where the right-of-way terminates on a body of open water, unless the City Council determines at a public hearing the applicant meets the criteria of Section 16 - of the Code.

(b) In all other cases of abandonment, no right-of-way can be abandoned unless there is an agreement to do so by all property owners on both sides of the right-of-way, and the City Council determines at a public hearing the applicant meets the criteria of Section

¹ / Additions to existing text are shown by underline, deletions are shown as ~~striketrough~~.

² / Pursuant to Ordinance No. 01-01-01 of the City, the applicable provisions of the Monroe County Code, as it

16- of the Code.

~~(e) The County Commission considers these a restriction on the rights of individuals who desire to abandon properties in accordance with Florida Statutes Section 336.09.~~

Section 2. Amendment to the Code. Section 16-___ of the City Code is hereby established to read as follows:

Section 16-___. Public Hearing Required.

(a) An application in a form established by the City must be filled out and submitted to the City Manager or designee, together with an application fee as maybe established by Resolution of the City Council. When the City Manager or designee determines that an application for abandonment of right-of-way is complete, he shall consult with the City Clerk and shall select a place and time certain for a public hearing and shall give the applicant notice of the applicant's responsibility to provide notice of the hearing as follows:

(1) The notice shall include the date, time and place of the public hearing, the legal description and sketch of the right-of-way sought to be abandoned with reference to the closest mile marker and a summary of the abandonment request.

(2) Publish notice of the public hearing at least fifteen (15) days in advance of the hearing date in the non-legal section of the local newspapers of general circulation in the City.

(3) At least fifteen (15) days in advance of the hearing date post the right-of-way

existed on the effective date of the City's incorporation, is the City of Marathon, Florida City Code.

sought to be abandoned with a waterproof sign at least four (4) square feet in front surface area, which is so lettered that the date, time and location of the hearing shall be easily visible from all public streets and public ways abutting the right-of-way. The applicant shall remove the posted notice within ten (10) days after completion of the hearing.

(4) Notify by certified mail, return receipt, all owners of real property located within three hundred (300) feet of the right-of-way sought to be abandoned. The real property owners required to be provided notice by this subsection shall be determined by a certified copy of the most recent Monroe County ad valorem tax record.

Failure to provide proper notice or other reason resulting in a delayed hearing shall result in the re-noticing of the abandonment request and which shall be at the expense of the applicant and which shall be an amount equal to double the appropriate application fee.

(b) Upon review of the application, and prior to the public hearing, the City Manager or designee shall submit to the 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:

(1) Whether the proposed abandonment will adversely affect the operations and functions of the City; and

(2) Whether the proposed abandonment will adversely affect public access to

and from the water; and

(3) Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within three hundred (300) feet of the right-of-way to be abandoned; and

(4) Whether the proposed abandonment will adversely affect a public view corridor; and

(5) Whether the proposed abandonment will deprive other property owners of access to and from their property; and

(6) Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

(c) At the public hearing, the City Council shall consider the application and relevant support materials, the City Manager or designee's recommendation 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 City Manager or designee for further review and revise recommendations. 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. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, 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 sections, sentences, clauses and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. **Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida; that the section of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. **Effective Date.** This Ordinance shall be effective immediately upon adoption.

The foregoing Ordinance was offered by Councilman Greenman, who moved for its adoption. This motion was seconded by Councilman Repetto, and upon being put to a vote, the vote was as follows:

Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED on first reading this 3rd day of September, 2002.

The foregoing Ordinance was offered by Councilman Bartus, who moved its adoption on second reading. The motion was seconded by Councilman Greenman, and upon being put to a vote, the vote was as follows:


Mayor John Bartus	<u>Yes</u>
Vice Mayor Randy Mearns	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman John Repetto	<u>Yes</u>
Councilman Pete Worthington	<u>Yes</u>

PASSED AND ADOPTED on second reading this ____ day of _____, 2002.




JOHN BARTUS, MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

F:\592001\ordinances\Road Abandonment - Final

SCANNED
10/1/02 #6481 KSV