

ORDINANCE NO. 4179

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, REPEALING AND REPLACING SECTION 29-66, “RELOCATION AND USE OF PUBLIC RIGHTS-OF-WAY” OF CHAPTER 29, “STREETS AND SIDEWALKS”, ARTICLE II, DIVISION 2, OF THE CITY’S CODE OF ORDINANCES IN ORDER TO CHANGE THE TITLE OF THE SECTION; INSERTING PURPOSE, INTENT AND DEFINITIONS; PROVIDING FOR A PROCESS FOR THE ABANDONMENT OF PUBLIC RIGHTS-OF-WAYS; CLARIFYING CRITERIA FOR RELOCATION OF RIGHTS-OF-WAY; PROVIDING FOR SEVERABILITY, PRESERVATION, CONFLICTS, AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City’s Code of Ordinances controls and directs the development of land within the municipal limits of the City by way of text and maps; and

WHEREAS, Chapter 29 of the City of Riviera Beach Code of Ordinances establishes regulations for Streets and Sidewalks, and specifically, Chapter 29, Article II, Division 2, Section 29-66 of the City of Riviera Beach Code of Ordinances establishes regulations for the abandonment, relocation and use of public rights-of-way; and

WHEREAS, the City’s Code of Ordinances, Section 29-66 is not responsive to the City’s current needs as it does not allow for the abandonment of public rights-of-way and the City wishes to provide a process for the abandonment of public rights-of-way; and

WHEREAS, approval of this City-initiated amendment to the Code of Ordinances will change the title of the section; insert a purpose, intent and definitions section; provide a process for the abandonment of public rights-of-ways; and clarify criteria for the relocation of rights-of-way; and

WHEREAS, the Planning and Zoning Board reviewed the proposed amendments to the Code of Ordinances Chapter 29, Article II, Section 29-66 on September 9, 2021, and recommended approval to the City Council; and

WHEREAS, City staff finds that this amendment to the Code of Ordinances is responsive to the needs of the City and provides a clear and consistent methodology for the City to receive compensation in conjunction with requests for abandonment of public rights-of-way; and

WHEREAS, the City Council of the City of Riviera Beach finds that this proposed amendment to the Code of Ordinances promotes the health, safety, and welfare of the residents of the City and the general public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, that:

SECTION 1. Legislative Findings, Intent, and Purpose. The foregoing recitals are ratified as true and correct and are incorporated herein. It is the purpose and intent of this

Ordinance to promote the health, safety and general welfare of the residents, businesses, and stakeholders of the City.

SECTION 2. REPEAL OF SECTION 29-66, “RELOCATION AND USE OF PUBLIC RIGHTS-OF-WAY”. In order to create a consistent methodology for the City to receive compensation in conjunction with requests for abandonment of public rights-of-way, the City Council hereby repeals Section 29-66 under Chapter 29, entitled “Streets and Sidewalks”, Article II, entitled “Construction”, Division 2 of the Code of Ordinances as shown below.

Sec. 29-66. Relocation and use of public rights-of-way.

In order to preserve and enhance the existing, interconnected street and block structure in downtown Riviera Beach, public rights-of-way shall not be abandoned. The commission may consider requests for the relocation or use of public rights-of-way using the following criteria:

- ~~(1) The proposed relocation resolves existing incompatibilities such as conditions where the fronts of some parcels face the backs of other parcels due to shifts in the block structure and street grid;~~
- ~~(2) The subject right of way is an alley or designated as a secondary street. Primary streets are not eligible for relocation or re-orientation unless a new primary street is provided;~~
- ~~(3) The applicant provides a new route within the project that is parallel to the subject right-of-way, establishes a potential (future) street connection on the zoning map, or creates greater connectivity within the city's street network;~~
- ~~(4) The proposed relocation maintains or increases public access to the waterfront;~~
- ~~(5) The relocation will not create a block with a perimeter measuring more than 2,000 feet.~~
- ~~(6) The proposed relocation supports a marine industry, whereby vessel size necessitates increased dimensions of the parcel. Approval of the use of public rights-of-way for marine industry is conditional upon maintaining the industry as the primary use; permits shall stipulate that rights-of-way revert to the city upon the redevelopment of parcels for primarily residential or commercial uses.~~
- ~~(7) Permits shall stipulate that commencement of construction shall occur within two years of approval; otherwise use of the subject right-of-way shall revert to the city.~~
- ~~(8) Requests to use public rights-of-way for sidewalk encroachments for frontage conditions such as arcades, galleries, or balconies will be considered on a case by case basis.~~

~~(Ord. No. 4038, § 2(Exh. A), 12-18-13)~~

SECTION 3. CREATION OF SECTION 29-66, “RELOCATION, USE OF AND ABANDONMENT OF PUBLIC RIGHTS-OF-WAY. In order to create a consistent methodology for the City to receive compensation in conjunction with requests for abandonment of public rights-of-way, the City Council hereby creates section 29-66, entitled “Relocation, use of and abandonment of Public Rights-of-Way” under Chapter 29, entitled “Streets and Sidewalks”, Article II, entitled “Construction”, Division 2 of the Code of Ordinances, which shall read as follows:

* * *

Sec. 29-66. Relocation, use of and abandonment of Public Rights-of-Way.

- A. Purpose and Intent - In order to preserve and enhance the existing, interconnected street and block structure in the City of Riviera Beach, public rights-of-way shall not be relocated or abandoned without consideration of the impacts and necessary mitigation.
- B. Definitions – The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- a. Abandon, and any variant thereof, includes the terms “vacate” and “annul.”
 - b. Abutting property- means any parcel of real property whose boundaries, or any part thereof, also serves as the boundary, or portion thereof, of the petition site.
 - c. Affected Property- means any parcel of real property, or portion thereof, which lies within three hundred (300) feet of the boundaries of the petition site.
 - d. Land value – means the value of land as established for the tax base by the property appraiser's office prior to any or all exemptions.
 - e. Owner – means that person, governmental entity or business entity which is the fee simple title holder of real property.
 - f. Owners association means any association or corporation created under the laws of the state, the membership of which is comprised of all owners of real property over which the owners association has jurisdiction by virtue of a declaration of covenants and restrictions, declaration of condominium, or similar instrument. The term shall include the terms "homeowners association," "condominium association," "cooperative association," and "property owners association."
 - g. Petitioner means the person, governmental entity or business entity submitting a petition for abandonment pursuant to this chapter. The term "petitioner" shall include "co-petitioner" where appropriate.
 - h. Petition for abandonment or petition means the form prescribed by the department which requests the abandonment of a plat, or portion thereof, right-of-way or public easement pursuant to this Section.
 - i. Petition site means any parcel of real property subject to a petition for abandonment pursuant to this Section.
 - j. Private right-of-way means any right-of-way dedicated or deemed to an owners association or the owner of the abutting property or which is dedicated as a right-of-way and is the perpetual maintenance obligation of any owners association or the owner of abutting property.

C. Relocation or Use of Public Rights-of-Way -The commission may consider requests for the relocation or use of public rights-of-way using the following criteria:

- (1) The proposed relocation resolves existing incompatibilities such as conditions where the fronts of some parcels face the backs of other parcels due to shifts in the block structure and street grid;
- (2) The subject right-of-way is an alley or designated as a secondary street. Primary streets are not eligible for relocation or re-orientation unless a new primary street is provided;
- (3) The applicant provides a new route within the project that is parallel to the subject right-of-way, establishes a potential (future) street connection on the zoning map, or creates greater connectivity within the city's street network;
- (4) The proposed relocation maintains or increases public access to the waterfront;
- (5) The relocation will not create a block with a perimeter measuring more than 2,000 feet.
- (6) The proposed relocation supports a marine industry, whereby vessel size necessitates increased dimensions of the parcel. Approval of the use of public rights-of-way for marine industry is conditional upon maintaining the industry as the primary use; permits shall stipulate that rights-of-way revert to the city upon the redevelopment of parcels for primarily residential or commercial uses.
- (7) Permits shall stipulate that commencement of construction shall occur within two years of approval; otherwise use of the subject right-of-way shall revert to the city.
- (8) Requests to use public rights-of-way for sidewalk encroachments for frontage conditions such as arcades, galleries, or balconies will be considered on a case by case basis.

D. Petitions for Abandonment of Rights-of-Way - Any person, governmental entity or business entity desiring to abandon the public's interest in any right-of-way shall be required to make application to the City pursuant to this article. Such application shall be on the petition form prescribed by the Development Services Department, and the information contained therein shall be verified by the petitioner under oath. Unless initiated by the City, any petition for abandonment of rights-of-way shall be signed by all owners of abutting property.

- a. Signatures – Any petition made on behalf of the City for right of way abandonment shall be signed by the City Engineer and City Manager. Private petitions for right-of-way abandonment shall be signed by the owner of the property or an agent acting on behalf of the owner of the property.
- b. Application fee – Except as provided herein, each petition for abandonment of a right-of-way shall be accompanied by a fee as set by the City to cover the cost of administrative review, site analysis and investigation, and publication of notice. No refunds shall be made. Any petition made on behalf of the City is not required to submit an application fee.

- c. Privilege fee – A privilege fee is hereby established, payable by any petitioner requesting the abandonment of a right of way. The privilege fee is to be used for the purpose of reimbursing the City’s costs and expenses incurred when acquiring real property for public use, or other municipal purposes for the benefit of the residents. Any petition made on behalf of the City is not required to provide a privilege fee.
- d. The privilege fee shall be determined and fixed by computing ninety (90) percent of the total land value of the petition site. The total land value of the petition site, per square foot, shall be equal to the averaged square foot land value of the abutting property, as established by the most current county property appraiser records. This calculation shall be based upon the cumulative land value of the abutting properties (cumulative value), determining the average value of the properties on a square footage basis (square footage value), and multiplying the square footage value by the number of square feet of the petition site to ascertain the total land value of the petition site.
- e. Notice of Intent - Immediately prior to filing the petition for abandonment with the department, the petitioner shall cause to be published a notice of intent in a newspaper of general circulation in the city once weekly for two (2) consecutive weeks. Such notice of intent shall state the intent of the petitioner to file a petition pursuant to this Section.
- f. Petition application procedures –In addition to any other information required by the Development Services Department, the petition shall contain the following:
 - i. Legal description – A complete and accurate legal description of the petition site.
 - ii. Justification Statement – A statement identifying the scope of the request and the purpose for the request.
 - iii. Survey – A certified land survey shall be prepared by a state registered land surveyor in accordance with the minimum technical standards of Florida Statutes Section 472.027, and chapter 21HH-6, Florida Administrative Code, or as may be amended, and attached as an exhibit to the petition. The survey shall also contain or depict the following information:
 - 1. An accurate drawing of the petition site;
 - 2. The boundaries of abutting properties;
 - 3. The square footage of the petition site; and,
 - 4. 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.
 - iv. Location map – A drawing 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.
 - v. 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. All owners of abutting property shall be so designated on this list. The petition shall state the source of the information used to compile the list and shall contain

an affidavit of the preparer that to the best of his knowledge said list is complete and accurate.

vi. A plan depicting any proposed relocation or abandonment of utilities. Note that all related costs shall be borne by the applicant.

E. Process – Petitions for rights-of-way abandonment shall be subject to internal staff review and/or peer review as deemed necessary to evaluate the proposal. Staff may also evaluate the petition in accordance with the criteria in Section C herein, and place additional conditions to mitigate impacts to the City and/or public. The petition shall then be heard at a duly noticed public hearing with the Planning and Zoning Board who act in an advisory capacity to the City Council. After the Planning and Zoning Board hearing the petition shall be heard and acted on by the City Council at a duly noticed public hearing.

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SECTION 5. The City Council finds that it is in the best interest of the health, safety, and welfare of the public to enact this Ordinance.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase or provision of this Ordinance, or its application, to any person or circumstance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. REPEAL OF LAWS IN CONFLICT. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 8. CODIFICATION. Specific authority is hereby granted to codify the Ordinance as 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 Ordinances of the City of Riviera Beach, and sections of this Ordinance may be renumbered to accomplish such intentions.

SECTION 9. EFFECTIVE DATE. This Ordinance shall become effective immediately upon final passage and adoption by City Council.

PASSED AND APPROVED on the first reading this _____ day of _____, 2021.

PASSED AND ADOPTED on second and final reading this _____ day of _____, 2021.

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APPROVED:

RONNIE L. FELDER
MAYOR

SHIRLEY D. LANIER
CHAIRPERSON

ATTEST:

CLAUDENE L. ANTHONY,
CERTIFIED MUNICIPAL CLERK
CITY CLERK

KASHAMBA MILLER-ANDERSON
CHAIR PRO TEM

TRADRICK MCCOY
COUNCILPERSON

JULIA A. BOTEL, Ed.D
COUNCILPERSON

DOUGLAS A. LAWSON
COUNCILPERSON

MOTIONED BY: _____

REVIEWED AS TO LEGAL SUFFICIENCY

SECONDED BY: _____

DAWN S. WYNN, CITY ATTORNEY

T. MCCOY: _____

DATE: _____

K. MILLER-ANDERSON: _____

S. LANIER: _____

J. BOTEL: _____

D. LAWSON: _____

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1ST READING

2ND & FINAL READING

MOTIONED BY: _____

MOTIONED BY: _____

SECONDED BY: _____

SECONDED BY: _____

T. MCCOY _____

T. MCCOY _____

K. MILLER-ANDERSON _____

K. MILLER-ANDERSON _____

S. LANIER _____

S. LANIER _____

J. BOTEL _____

J. BOTEL _____

D. LAWSON _____

D. LAWSON _____