

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
Through: Donald Leland Craig, AICP Interim Planning Director
From: Patrick Wright
Meeting Date: April 5, 2011

RE: An easement request with the City of Key West for approximately 204 square feet for purposes of constructing a fence and landscape planting at 1415 Olivia Street (RE# 00023940-000000) in the Historic Medium Density Residential zoning district per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: To request an easement from the City to construct a fence, landscape planting, and brick paver walkway.

Location: 1415 Olivia Street
(RE# 00023940-000000)

Zoning: Historic Medium Density Residential (HMDR) Zoning District

BACKGROUND:

This is a request for an easement pursuant to Section 2-938 of the Code of Ordinances. The purpose of the easement is to construct a fence in the city right-of-way and essentially enclose a front yard area adjacent to the homeowner's front property line for landscape planting and a brick paver walkway. The neighbors on both sides of the property have fences built into the right-of-way to create a similar front yard area. The easement being requested is for approximately 204 square feet.

Previous City Actions:

Development Review Committee Meeting: January 27, 2011

HARC: January 11, 2011
H10-01-742

Planning Staff Analysis:

As shown in the Specific Purpose Survey, dated April 4, 2009, the easement request is for approximately 204 square feet. Two comments were raised at the DRC meeting. The City Engineering department expressed concern that the city plans to extend and widen the sidewalk which may require the removal of the fence. The City landscaping department requested that the applicant fill out the right-of-way application form locating the trees on city property. As of the date of this report, the Planning Department has not received any public comment regarding the requested easement.

Code of Ordinances Section 2-938 regulates the granting of easements as follows:

(a.) The city may grant an easement over any lands or interest therein owned by the city or any city agency. Where the granting of an easement over city-owned real property is proposed, it shall be noticed by both of the following methods, and such advertisement and notice shall state the address of the subject property and shall contain a survey depicting the property and encroachment:

- 1) One publication in a newspaper of general circulation in the city at least 14 days in advance of city commission consideration of the item; and*
- 2) a. Certified mail, return receipt requested, to owners of real property adjacent to the proposed easement area on both sides, front, and rear, whether or not separated therefrom by a street, sidewalk, alley or right-of-way, and to any other owners of real property within 50 feet of the proposed easement area; or*
 - b. Hand delivery of notice to all parties specified in subsection (a)(2)a of this section. Proof of delivery shall be sworn statement of the applicant.*

Notice under subsections (a)(2)a and (a)(2)b of this section shall be mailed or hand delivered at least 14 days in advance of city commission consideration of the item. The applicant shall pay a fee of defraying the cost of notice and advertisement in an amount to be determined by the City Clerk.

(b.) If the city grants an applicant's request for easement over any lands owned by the city or any city agency, the applicant shall pay an annual fee to the city. The annual fee shall be prorated based on the effective date of the easement. The applicant shall pay the fee each subsequent year the easement is in effect, as follows:

- 1) Each easement granted by the city for the use of less than 20 square feet of city property, \$200.00.*
- 2) Each easement granted by the city for the use of 20 square feet to 100 square feet of city property, \$300.00*

3) *Each easement granted by the city for the use of more than 100 square feet of property, \$400.00.*

Should the application for an easement be approved, the applicant shall be required to pay an annual fee of \$400.00, as the requested easement is for approximately 204 square feet.

Options/Advantages/Disadvantages:

Option 1. Approve the easement request of approximately 204 square feet with the following conditions:

1. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
2. That the owner shall pay the yearly fee specified in Code of Ordinances Section 2-938 on or before the anniversary date of approval.
3. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the easement if the yearly fee required by the Code of Ordinances is not paid.
4. That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of one hundred thousand dollars (or such other amount as may be legislatively determined to be the maximum extent of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this easement.
5. The proposed fence be the only buildable structure in the easement.

1. Consistency with the City's Strategic Plan, Vision, and Mission:

The City's Strategic Plan is silent to this issue.

2. Financial Impact:

The City will collect \$400.00 annually if the application for easement is approved.

Option 2: Deny the easement request of approximately 204 square feet.

1. Consistency with the City's Strategic Plan, Vision, and Mission:

The City's Strategic Plan is silent to this issue.

3. Financial Impact:

There is no direct financial impact to the City if the proposed easement is not approved. However, the City would lose the potential \$400.00 annual revenue that would be generated if the easement is not approved.

Recommendation

The Planning Department recommends **approval** with the following conditions:

1. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
2. That the owner shall pay the yearly fee specified in Code of Ordinances Section 2-938 on or before the anniversary date of approval.
3. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the easement if the yearly fee required by the Code of Ordinances is not paid.
4. That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of one hundred thousand dollars (or such other amount as may be legislatively determined to be the maximum extent of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this easement.
5. The proposed fence be the only buildable structure in the easement