



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager

**Through:** Donald Leland Craig, AICP Interim Planning Director

**From:** Brendon Cunningham

**Meeting Date:** February 15, 2011

**RE:** An easement request for approximately 34.84 square feet to address an encroachment onto City Right-of-Way for an existing structure at 730 Fleming Street (RE# 00008670-000000) in the Historic Medium Density Residential (HMDR) zoning district per Section 2-938 of the Code of Ordinances of the City of Key West, Florida.

### **ACTION STATEMENT:**

**Request:** To request an easement from the City to mitigate the encroachment of existing structures at 730 Fleming Street.

**Location:** 730 Fleming Street.  
(RE# 00008670-000000)

**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 request for the easement originates from the applicant seeking to obtain building permits to replace two windows on a structure (built circa 1870), as well as structural piers. Due to the structure's encroachment onto the City right of way, the applicant was instructed to apply for an easement. The easement is being requested to address the 34.84 square foot encroachment.

### **Previous City Actions:**

Development Review Committee Meeting:  
HARC:

December 17, 2010  
H10-01-198

### **Planning Staff Analysis:**

As portrayed in the Specific Purpose Survey, dated November 10, 2010, the area of the easement request is for 34.84 square feet. Two comments were raised at the DRC meeting. The HARC Planner wanted clarification as to whether the fixed awning that was removed would be replaced as part of this request. The Pedestrian Coordinator stated that the applicant will address that issue at a later date with a Revocable License

Agreement per Section 2-939. 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 to the City an annual fee of \$300.00, as the requested easement is for 34.84 square feet.

**Options / Advantages / Disadvantages:**

**Option 1.** Approve the easement request of 34.84 square feet with the following conditions:

1. That the easement shall terminate upon removal or replacement of the encroaching structure and there shall be no expansion or further encroachments in the easement area.
2. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. That the owner shall pay the yearly fee specified in Code of Ordinances Section 2-938 on or before the anniversary date of approval.
4. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the yearly fee required by the Code of Ordinances is not paid.
5. 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.

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

2. **Financial Impact:**

The City will collect \$300.00 annually if the application for easement is approved.

**Option 2.** Deny the easement request of 34.84 square feet.

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

2. **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 \$300.00 revenue that would be generated annually if the easement is not approved.

**RECOMMENDATION:**

The Planning Department recommends that the requested easement be **approved**, with the following conditions:

1. That the easement shall terminate upon removal or replacement of the encroaching structure and there shall be no expansion or further encroachments in the easement area.
2. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. That the owner shall pay the yearly fee specified in Code of Ordinances Section 2-938 on or before the anniversary date of approval.
4. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the yearly fee required by the Code of Ordinances is not paid.
5. 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.