



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager

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

**From:** Brendon Cunningham

**Date:** May 15, 2012

**RE:** Easement – 1021 Watson Street (RE# 00033430-000000) – An easement request for approximately 95 square feet of Virginia Street right-of-way per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

### ACTION STATEMENT:

Request: This request is for an easement for approximately 70 square feet of publicly owned right-of-way to maintain an existing swimming pool.

Location: 1021 Watson Street (RE # 00033430-000000) easement to be on Virginia Street Right-of-Way (ROW)

Zoning: Historic Medium Density Residential Commercial Zoning District

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### BACKGROUND:

This is a petition for an easement pursuant to Section 2-938, City of Key West Code of Ordinances. The applicant seeks to obtain an easement for an existing encroachment. The applicant purchased the property with a deck, swimming pool and privacy wall erected in the City's right-of-way (ROW). A sidewalk improvement project required the City to utilize the entire width of the ROW. With the exception of the swimming pool itself, all of the encroachments were removed. These included the wall, a portion of the deck and a portion of the pool apron. A settlement agreement was reached between the City and the applicant to allow for the existing pool and required new fencing with the understanding that an easement would be necessary with an annual fee assessed.

### City Actions:

Settlement Agreement: December 29, 2011  
City Commission: May 15, 2012

**PLANNING STAFF ANALYSIS:**

The sidewalk improvement project was slated for Virginia Street from White Street west to Windsor Lane. As described in the Specific Purpose Survey provided by Lynn O’Flynn dated April 24, 2012, the area of the easement request is for that portion containing the swimming pool. The property, addressed as 1021 Watson Street, is at the intersection with Virginia Street. The pool is shown on both the special purpose survey for the overall project as well as on the owner’s property survey. The portion of the ROW needed for the existing pool and required new fencing is comprised of approximately 95 square feet. Photographs have also been submitted with the request.

City staff has reviewed the application. Excepting the ROW itself, City staff did not identify any publically owned infrastructure. Therefore, it would appear that granting this easement would not be injurious to the area involved or detrimental to the public interest or welfare.

Per Section 2-938 b (2), each easement granted by the city for the use of 20 square feet to 100 square feet of property requires an annual fee of \$300.00. The applicant is requesting an easement for the 95 square feet and would be obligated to pay the \$300.00 fee should the easement be granted.

**Options / Advantages / Disadvantages:**

**Option 1.** To approve the easement of 95 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 of \$300 specified in Code of Ordinances Section 2-938.
3. 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 legislatively be 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.
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. The proposed existing pool and required new fencing will be the total allowed construction within the easement area.

1. **Consistency with the City’s Strategic Plan, Vision and Mission:**  
The Strategic Plan is silent to this issue.

2. **Financial Impact:** The City will collect \$300.00 annually as part of the approval of the application. There will be no cost to the city for this easement approval.

**Option 2.** Deny the easement based on findings that the City's needs outweigh the request.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** The Strategic Plan is silent to this issue.
2. **Financial Impact:** The City would lose the potential to collect the revenue of an easement agreement.

**RECOMMENDATION:** Option 1

Based on the existing conditions, the Planning Department recommends **approval** to the City Commission for the proposed **easement** with conditions as follows:

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 of \$300 as specified in the Code of Ordinances Section 2-938 b (3).
3. 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 legislatively be 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.
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. The existing pool and required new fencing will be the total allowed construction within the easement area.