

ORDINANCE NO. 16-2008

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF LAKE PARK, CHAPTER 72, ARTICLE I, PERTAINING TO STREETS, SIDEWALKS AND OTHER PUBLIC PLACES; CREATING SECTION 72-2 ENTITLED "CRITERIA FOR ABANDONING RIGHTS-OF-WAY;" CREATING SECTION 72-3 ENTITLED "APPLICATION FOR ABANDONMENT;" CREATING SECTION 72-4 ENTITLED "PROCEDURES FOR ABANDONMENT APPLICATIONS;" CREATING SECTION 72-5 ENTITLED "COMMISSION HEARING AND REPORT;" CREATING SECTION 72-6 ENTITLED "RECORDING;" PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to public rights-of-way, which have been codified at Chapter 72 of the Code of Ordinances; and

WHEREAS, Town staff has determined that creating Sections 72-2, 72-3, 72-4, 72-5, and 72-6 of the Code is necessary to clarify the Town's requirements for the abandonment of public rights-of-way; and

WHEREAS, Town staff has recommended to the Town Commission that Sections 72-2, 72-3, 72-4, 72-5, and 72-6 of Chapter 72 of the Town's Code be created in order to more accurately set forth the limitations and requirements for the abandonment of public rights-of-way; and

WHEREAS, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety and general welfare to amend the Town's Code to provide separate and distinct criteria for applications and abandonment's of public rights-of-way;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the findings of the Town Commission.

Section 2. Chapter 72, Article I, of the Code of Ordinances of the Town of Lake Park, Florida is hereby amended to read as follows:

Sec. 72-2. Criteria for abandoning public rights-of-way.

(a) All applications for the abandonment of public rights-of-way shall be reviewed and acted upon by the Town Commission. The burden of proof shall be upon the applicant to show that the application is consistent with the Town's comprehensive plan and all of the standards listed in this section.

(b) The Town Commission may approve an abandonment application if the applicant demonstrates, by clear and convincing evidence, that a right-of-way is no longer required for a public use and convenience. Any proposed abandonment of a public right-of-way shall demonstrate that such action furthers the health, safety and welfare of the Town's residents. In making this determination, the Town Commission shall consider whether:

(1) the abandonment deprives any business or individual of a reasonable means of ingress and egress to that business or individual's property;

(2) the abandonment adversely affects utility service efficiency, or precludes the future provision of public or private utility services;

(3) the abandonment reduces adjacent property values; and

(4) the abandonment eliminates the potential use of dedicated property for a public purpose, including, but not limited to, pedestrian or vehicular access, recreation, environmental preservation, or stormwater management.

(c) Generally abandonments for an entire right-of-way should be considered, unless there are extenuating circumstances for considering the partial abandonment of a right-of-way.

(d) Each abandonment application shall include written statements from all public utilities serving the Town, including water, sewer, electric or cable television utilities, stating whether or not the proposed abandonment would adversely affect that utility.

(e) Prior to the Commission's consideration of the abandonment application the Community Development Director shall obtain an appraisal from a Florida licensed real estate appraiser of the subject property and the applicant shall reimburse the Town for the cost of same.

(f) The abandonment of a public right-of-way shall not occur until the applicant has paid to the Town the appraised value of the property to be abandoned, except as allowed by subsection (f) below. An abandonment approval shall be void if payment does not occur within 90 days from the date of approval by the Town Commission.

(g) The Town Commission may abandon an unused alley, street, utility easement, located within a residential zoning district, without payment to the Town, provided the abandonment is to the benefit of the Town, and the right-of-way is currently not used, or is not contemplated for future use by the public entity, such as a water, sewer, electric or cable television utility.

Sec. 72-3. Application for abandonment.

All requests for abandonment to the Town shall be made in writing upon an application form giving the following information:

(1) The name and address of the applicant.

(2) A description of the real property if any owned by the applicant, which would be affected by the abandonment request.

(3) The reason for the abandonment request.

(4) A general description of the street, alley or easement, other non-fee interest of the Town in real estate, which is to be abandoned and its location. A legal description, and a plat, survey or engineering drawing of the area involved.

(5) The names and addresses of the owners, businesses or occupants of real property bounding and abutting the street, alley, or easement sought to be abandoned, and the property owners located within 250 feet thereof.

(6) Such other relevant information as may be required in order to fully present the full circumstances of the abandonment request.

Sec. 72-4. Procedures for abandonment applications.

Applications for abandonment, together with the fee therefore, shall be made and presented to the Director of the Community Development Department, who shall proceed as follows:

(1) The Director shall review the application for compliance with the above requirements, returning incomplete or inaccurate applications to the applicant submitting same for correction or completion.

(2) The Director shall consult with the Public Works Director, Town Engineer, Town Attorney, or other staff advisors to the Town to review the relevant information concerning the abandonment requested.

(3) The Town shall require the applicant to notify all public utilities that may be affected by the abandonment requested, and obtain their response thereto.

(4) The Town shall require the applicant to notify the general public by posting signs and publishing notice upon the street or alley, or portion thereof affected, setting forth notice of the proposed abandonment, and of the date of the hearings to be held thereon by the Town Commission

Sec. 72-5. Commission hearing and report.

(a) The Town Commission shall hold a public hearing regarding the application for abandonment.

(b) The Commission shall consider the public right and interest in the right-of-way, subject to the application for abandonment from the standpoint of the benefit of the community as a whole, and may make findings regarding any rearrangement of streets and rights-of-way, which are involved therein in order to secure a more regular and harmonious system for traffic circulation. The Commission shall also determine valuation of any such street, alley, easement, or right-of-way to be abandoned, and the extent to which the public interest and general welfare of the community might be compensated by obtaining any alternate right-of-way, or any monetary contribution for additional right-of-way, or by any combination thereof, in exchange for the abandonment requested. The Commission may recommend conditions as appropriate for the requested abandonment.

Sec. 25-6. Recording.

It shall be incumbent upon the applicant to file a certified copy of the abandonment ordinance in the official records with the Clerk of the Circuit Court for Palm Beach County, and to furnish a copy of the recorded document to the Town Manager for inclusion in the official Town records.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance 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 4. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Codification. The sections of the Ordinance may be made a part of the Town Code of Laws and Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 17 day of September, 2008, the foregoing Ordinance, was offered by Commissioner Osterman who moved its approval. The motion was seconded by Vice-Mayor Daly, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR ED DALY	<u>/</u>	_____
COMMISSIONER CHUCK BALIUS	<u>/</u>	_____
COMMISSIONER JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 21 DAY OF September, 2008

Upon Second Reading this 1 day of October, 2008, the foregoing Ordinance, was offered by Commissioner Osterman who moved its adoption. The motion was seconded by Commissioner Balius, and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>Absent</u>	_____
VICE MAYOR ED DALY	<u>/</u>	_____
COMMISSIONER CHUCK BALIUS	<u>/</u>	_____
COMMISSIONER JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 16-2008** duly passed and adopted this 1 day of October, 2008.

TOWN OF LAKE PARK, FLORIDA

BY: Desca DuBois
Mayor, Desca DuBois

ATTEST:

Vivian Mendez Lemley
Town Clerk, Vivian Mendez Lemley
(Town Seal)
TOWN OF LAKE PARK
SEAL

Approved as to form and legal sufficiency:

Thomas J. Baird
Town Attorney, Thomas J. Baird

FLORIDA