

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF CAPE CORAL, FLORIDA, ARTICLE 3, DEVELOPMENT REVIEW, CHAPTER 4, SPECIFIC REVIEW PROCEDURES—QUASI-JUDICIAL PERMITS AND APPROVALS, SECTION 3.4.5., VACATIONS OF PLATS, EASEMENTS, AND RIGHTS-OF-WAY, REGARDING ADDITIONAL REQUIREMENTS FOR SURVEYS, SKETCHES, AND LEGAL DESCRIPTIONS, AND ADDITIONAL REQUIRED PROCEDURES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral, Florida Land Development Code, Article 3, Chapter 4, Section 3.4.5., is hereby amended as follows:

Section 3.4.5. Vacations of plats, easements, and rights-of-way.

The purpose and intent of this section is to provide procedures for City Council to vacate rights-of-way, easements, and plats pursuant to authority granted under Florida law. The City Council may adopt ordinances vacating plats in whole or in part of subdivisions within the corporate limits of the city, returning the property covered by such plats either in whole or in part into acreage for the purpose of taxation, or vacating public rights-of-way, public easements, or other property in response to applications filed from adjoining property owners.

A. General.

1. The city may retain an easement for utilities or drainage over any vacated right-of-way and that no use may be made of vacated right-of-way which will be inconsistent with or interfere with the retained easement. The party seeking vacation of a plat, city street, alley, canal, other right-of-way, public easement, or other property must show or submit the following:
 - a. Petitioner has color of title to the tract or parcel of land covered by the plat or portion of the plat of which vacation is sought, unless the petitioner is the City of Cape Coral;
 - b. Letter of approval from Lee County Electric Cooperative, Inc.;
 - c. Letter of approval from affected telephone companies;
 - d. Letter of approval from affected cable companies; and
 - e. Letter of approval from any other affected utility companies (e.g., water, sewer);
2. Surveys, sketches, and legal descriptions. Applicants requesting to vacate rights-of-way or easements shall provide a recent boundary survey or survey sketch of the property prepared by a registered surveyor showing the area to be vacated and provide a complete legal description(s).
 - a. Descriptions written by a surveyor and mapper to describe land boundaries by metes and bounds shall provide definitive identification of boundary lines.
 - b. When a sketch accompanies the property description, the sketch shall show all information referenced in the description and shall state that the sketch is not a survey. The initial point in the description shall be tied to either a government corner, a recorded corner, or some other well-established survey point.
 - c. The survey or sketch shall show all pavement and all utility and drainage facilities, including water, sewer, cable lines, utility poles, swales, ditches, manholes, and catch basins.
 - d. Separate drawings and legal descriptions are required for each vacation area when right-of-way and easement configurations differ.

B. Standards and Criteria. Applications for vacations shall be reviewed in accordance with the following criteria:

1. Whether the plat, easements, or rights-of-way are required by the City for any future transportation, access, water management, or public utility purposes.

2. Whether any required easements are necessary to accommodate the vacation of any plat, easement, or right-of-way.
 3. If alternate routes are required or available that do not cause adverse impacts to surrounding areas.
 4. If the closure of a right-of-way negatively affects areas utilized for vehicles to turn around and exit an area.
 5. Whether local utility providers have given consent to the vacation of the plat, easements, or rights-of-way. The local utility providers may require additional easements or relocation of existing utilities facilities to complete the vacation.
- C. Additional Procedures and Noticing Requirements. In addition to the standard notice requirements required by this Code, the following additional procedures and notice requirements apply for vacations:
1. A pre-application meeting shall be held with City staff prior to the filing of a vacation application with the City.
 2. In order to ensure that a vacation application complies with the City's fiduciary duty to hold certain platted lands in trust for the public interest, a contribution to the General Tree Fund or South Cape Tree Fund may be required by the City based on the location of the site. The developer contribution shall be 50% of the assessed value of the developer's property abutting the area to be vacated as reported for the most recent year by the Lee County Property Appraiser. The value shall be calculated by dividing 50% of the assessed land value of the property abutting the area to be vacated by the square footage of property to obtain the value per square foot. The value per square foot shall be multiplied by the square footage of the rights-of-way or easements to be vacated to determine the developer contribution. In lieu of a contribution to the tree fund, at the sole discretion of the City, the developer may construct on- or off-site improvements that provide a tangible benefit to the public. Said improvements shall have a value that equals or exceeds the calculated contribution to the tree fund using the methodology described within this subsection. Records detailing expenses in fulfilling this requirement shall be maintained by the developer and shall be made available to the City upon request for verifying compliance with this provision. Payment of developer contributions to either tree fund may be required prior to the final public hearing before the City Council at the City's sole discretion. The City shall refund any contribution made by a developer to either tree fund should the City Council deny the vacation request.
 - 1- 3. Specific notice requirements for vacations. Public hearing notices to vacate a plat or portion thereof shall be published once a week for two consecutive weeks, the first publication being not less than two weeks prior to the date of public hearing on the petition.
 - 2- 4. If the parcel to be vacated includes an alley, all property owners serviced by the alley and all property owners serviced by a connecting alley shall be noticed.
 - 3- 5. Adoption and recording of resolution and ordinance. After public hearing, the City Council may approve an application for a vacation if it determines there is no reasonably foreseeable public use for the vacated area. Approval of a vacation shall be by resolution or ordinance. The City may retain easements for utilities or drainage in and upon the vacated area. Upon adoption of the resolution vacating the plat or portion thereof, the City Clerk shall furnish to the petitioner a certified copy thereof and the petitioner shall cause the same to be recorded in the public records of the county and shall return a copy, showing the recording information, to the Department of Development Services.
 - 4- 6. Effect. The adoption and recording of a vacation shall have the effect of vacating all streets and alleys and city-owned easements shown on the portion of the plat so vacated, unless the resolution or ordinance specifically reserved unto the city such city-owned easements or such streets or alleys. If public rights-of-way are vacated, the resolution or ordinance shall specify whether or not easements are reserved therein for utilities and drainage. The resolution or ordinance shall not have the effect of vacating any public canal shown on the portion of the plat vacated, unless the resolution or ordinance specifically so provides.
 - 5- 7. Petitioner's responsibility. The city, City Council, and all officers, employees, and agents thereof shall not assume any responsibility or liability for any matters and things

to be done or completed by the petitioner pursuant to the provisions hereof. It is recognized that this procedure may affect substantial interests in real property and other proprietary rights, and the petitioner shall assume full and complete responsibility for compliance with the requirements of law and these procedures in connection with or arising out of any vacation proceedings instituted by the petitioner.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF CAPE CORAL AT THEIR REGULAR SESSION THIS _____ DAY OF _____, 2024.

JOHN GUNTER, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

GUNTER	_____	NELSON	_____
STEINKE	_____	KILRAINE	_____
LEHMANN	_____	LONG	_____
DONNELL	_____	KADUK	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2024.

KIMBERLY BRUNS
CITY CLERK

APPROVED AS TO FORM:

ALEKSANDR BOKSNER
CITY ATTORNEY

ord/LDC Vacations