NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

# Council Report

To: The Honorable Mayor and City Council

From: Maxine Calloway, Esq., A.I.C.P., Community Planning & Development Director

Date: March 27, 2012

RE: AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CODE OF ORDINANCES ENTITLED, "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 9 ENTITLED, "VACATION AND ABANDONMENT OF RIGHT- OF- WAY AND EASEMENTS", SPECIFICALLY AT SECTION 3-901 ENTITLED, "PURPOSE AND APPLICABILITY", SECTION 3-902 ENTITLED, "APPLICATION", AND SECTION 3-903 ENTITLED, "STANDARDS", IN ORDER TO REVISE THE DEVELOPMENT STANDARDS CONTAINED THEREIN TO INCLUDE A PROVISION FOR APPRAISALS AND COMPENSATION FOR VACATED AND/OR ABANDONED CITY OWNED RIGHT-OF-WAYS AND EASEMENTS; PROVIDING FOR REPEAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND AN EFFECTIVE DATE.

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## RECOMMENDATION

That the City Council adopts the proposed ordinance amending Article 3, Division 9 at Sections 3-901 and 3-902 in order to revise the development standards to include a provision for appraisals and compensation for vacated and/or abandoned city owned right-of-ways.

## BACKGROUND

Article 3, Division 9 of the City's LDRs entitled, "Vacation and Abandonment of Right-of-Way and Easements", establishes a uniform procedure for the abandonment of City owned right-of-ways. Over the past two decades, the City of North Miami has approved over 17 resolutions authorizing the abandonment and conveyance of City owned rights of ways and alleyways. However to date, the City has not received any compensation for the conveyance of such lands to private property owners. Once approved, such abandoned and/or vacated lands become valuable assets to private property owners, as it enhances the property owner's existing contiguous property in that it becomes a part of the new boundaries, enlarging the

overall land area and increasing the value. As such, the City is desirous of amending Section 3-901 to 3-902 to include a provision to allow compensation for city owned right-of-ways proposed for vacation and/or abandonment based on the appraised value of such property interests.

Policy 11.1.2 of the City's Comprehensive Plan requires that the City utilize a variety of funding sources to help implement future capital improvements projects, and that possible sources include: ad valorem taxes, general revenues, enterprise revenues, assessments, tax increment financing, grants, and private funds. To that end, the proposed Ordinance helps to implement the City's Comprehensive Plan in that it allows the City to potentially generate revenue from the sale of such public lands.

## CONCLUSION

Staff is of the opinion that the proposed amendment satisfies the requirements of Section 3-1004 of the City's Land Development Regulation and is in keeping with not only the goals, objectives and policies of the City Comprehensive Plan, but also the vision and directive given by the Planning Commission. If approved the text amendment would provide a much needed fiscal benefit by allowing monetary compensation for City owned right-of-ways proposed for vacation and/or abandonment.

## Attachments

1) Resolution

**ORDINANCE NO. _____**

**AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CODE OF ORDINANCES ENTITLED, "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 3, DIVISION 9 ENTITLED, "VACATION AND ABANDONMENT OF RIGHT-OF-WAY AND EASEMENTS", SPECIFICALLY AT SECTION 3-901 ENTITLED, "PURPOSE AND APPLICABILITY", SECTION 3-902 ENTITLED, "APPLICATION", AND SECTION 3-903 ENTITLED, "STANDARDS", IN ORDER TO REVISE THE DEVELOPMENT STANDARDS CONTAINED THEREIN TO INCLUDE A PROVISION FOR APPRAISALS AND COMPENSATION FOR VACATED AND/OR ABANDONED CITY OWNED RIGHT-OF-WAYS AND EASEMENTS; PROVIDING FOR CONFLICTS, REPEAL, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, on April 28, 2009, the Mayor and City Council of the City of North Miami ("City") adopted the Land Development Regulations ("LDRs") under Chapter 29 of the City's Code of Ordinances; and

**WHEREAS**, Article 3, Division 9 of LDRs entitled, "Vacation and Abandonment of Right-of-Way and Easements", establishes a uniform procedure for the abandonment of City owned right-of-ways; and

**WHEREAS**, the City is desirous of amending Section 3-901 entitled, "Purpose and Applicability", Section 3-902 entitled, "Application", and Section 3-903 entitled "Standards", to include a provision for appraisals and compensation for city owned right-of-ways and easements proposed for vacation and/or abandonment; and

**WHEREAS**, Policy 11.1.2 of the City's Comprehensive Plan requires that the City utilizes a variety of funding sources to help implement future capital improvements projects, and that possible sources include: ad valorem taxes, general revenues, enterprise revenues, assessments, tax increment financing, grants, and private funds; and

**WHEREAS**, the City believes the proposed amendment follows the spirit and intent of the Comprehensive Plan while providing a fiscal benefit to the City, by allowing monetary

compensation for City owned right-of-ways and easements proposed for abandonment, based on the appraised value of such property interests; and

**WHEREAS**, the Mayor and City Council of the City of North Miami have determined that the proposed amendments to the LDRs , is in the City's best interest and further serves the goals, objectives and policies of the City's Comprehensive Plan.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:**

**Section 1.** The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the Code of Ordinances entitled, "Land Development Regulations", by amending Article 3, Division 9 entitled, "Vacation and Abandonment of Right-of-Way and Easements", specifically at Section 3-901 entitled, "Purpose and Applicability", Section 3-902 entitled, "Application", and Section 3-903 entitled, "Standards", in order to revise the Development Standards contained therein to include a provision for appraisals and compensation for vacated and/or abandoned City owned right-of-ways and easements, as follows:

## CHAPTER 29. LAND DEVELOPMENT REGULATIONS

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## ARTICLE 3. DEVELOPMENT REVIEW

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DIVISION 9. VACATION AND ABANDONMENT OF RIGHT OF WAY AND EASEMENTS.

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**Sec. 3-901. Purpose and Applicability.**

The purpose of this division is to establish a uniform procedure for the abandonment of ~~non fee~~ real property interests of the City. This division applies to city streets, alleys, sidewalks, easements and other fee or non-fee property interests of similar character.

**Sec. 3-902. Application and Fees.**

A property owner whose property abuts a public right-of-way or alleyway may apply to the city for the abandonment, in whole or in part, of the abutting right-of-way or alleyway. The fee simple right-of-way or alleyway to be abandoned shall be appraised by an independent appraiser to determine the fair market value.

The applicant is required to pay a cost recovery fee for the independent appraisal. Once appraised the applicant will have the option to purchase the property for no less than ninety (90%) percent of the appraised value of said lands in accordance with Article 1, Section 3 of the City's Charter. All requests for abandonment of city streets, alleys, sidewalks, easements and other fee or non-fee interests which the City may have in real property shall be made in writing upon an application form approved by City staff and shall be accompanied by applicable fees, and shall be filed with the Community Planning and Development Department.

**Sec. 3-903. Standards.**

Applications for vacation or abandonment of city streets, alleys, sidewalks, easements and other fee or non-fee interests which the City may have in real property shall be approved provided that it is demonstrated that:

A. The fee or non-fee property interest sought to be vacated or abandoned:

1. Does not provide a benefit to the public health, safety, welfare or convenience, in that:

   a. it is not being used by the City for any of its intended purposes; and

   b. no comprehensive plan, special purpose plan or capital improvement program anticipates its use; or

2. Provides some benefit to the public health, safety, welfare or convenience, but the overall benefit anticipated to result from the vacation or abandonment outweighs the specific benefit derived from the non-fee property interest, in that:

   a. the purpose of the interest sought to be vacated or abandoned will be adequately and appropriately served in an alternative manner when the interest is vacated or abandoned;

   b. the vacation or abandonment will not compromise the delivery of emergency services;

   c. the vacation or abandonment will not compromise pedestrian or vehicular safety;

   d. the vacation or abandonment will not interfere with solid waste removal services;

   e. the vacation or abandonment will not frustrate any comprehensive plan, special purpose plan or capital improvement program of the City;

   f. the vacation or abandonment will not interfere with any planning effort of the City that is underway at the time of the application but is not yet completed; and

g. the vacation or abandonment will provide a material public benefit in terms of promoting development or redevelopment of abutting property, removing blighting influences or improving the City's long-term fiscal position.

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**Section 2.** **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

**Section 3.** **Conflicts.** All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

**Section 4.** **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5.** **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered 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 become effective immediately upon adoption on second reading.

**PASSED AND ADOPTED** by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of _____, 2012.

**PASSED AND ADOPTED** by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2012.

_____
ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

**Vote:**

| | | |
|---|---|---|
| Mayor Andre D. Pierre, Esq. | _____ (Yes) | _____ (No) |
| Vice Mayor Jean R. Marcellus | _____ (Yes) | _____ (No) |
| Councilperson Michael R. Blynn, Esq. | _____ (Yes) | _____ (No) |
| Councilperson Scott Galvin | _____ (Yes) | _____ (No) |
| Councilperson Marie Erlande Steril | _____ (Yes) | _____ (No) |

Additions shown by underlining. Deletions shown by ~~overstriking~~.