

ORDINANCE NO. 023-005

AN ORDINANCE AMENDING CHAPTER 25, STREETS AND SIDEWALKS, OF THE CODE OF ORDINANCES, CITY OF MARLIN, BY ADOPTING ARTICLE VI. VACATING AND ABANDONMENT OF PUBLIC RIGHT-OF-WAY, STREETS, AND ALLEYWAYS; ADOPTING PROCEDURES FOR THE ABANDONMENT OF PUBLIC RIGHT-OF-WAY, STREETS, AND ALLEYWAYS BY THE CITY OF MARLIN; REPEALING AND AMENDING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Section 51.001 and Subchapter E of Chapter 51, of the Texas Local Government Code authorizes the City of Marlin ("City") to adopt an ordinance, not inconsistent with state law, that is in the best interest of the City and in the best interest of the public health, safety, and welfare of the citizens of the City;

WHEREAS, under Sec. 311.001 of the Texas Transportation Code, the City has exclusive control over and under the public highways, streets, and alleys of the municipality and under Sec. 311.007 of the Texas Transportation Code, the City may vacate, abandon, or close a street or alley;

WHEREAS, the City has received requests to abandon right-of-way and alleyways that have been dedicated to the City;

WHEREAS, the City Council finds that it is necessary to adopt a procedure and process that shall govern and apply to all requests submitted to the City requesting that the City abandon vacate, or release City right-of-way, to vacate or abandon a City street right-of-way, and to vacate or abandon any alley or alleyway located within the City; and

WHEREAS, the City Council adopts this Ordinance for the purpose of establishing a procedure and process that shall govern and apply to all requests submitted to the City requesting that the City abandon or release City right-of-way, to abandon a City street right-of-way, and to abandon any alley or alleyway. Located within the City

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment of Chapter 25 Streets and Sidewalks, of the City of Marlin Code of Ordinances. Chapter 25 of the Marlin Code of Ordinances is hereby amended to adopt Article VI. Vacating and Abandonment of Public Right-of-Way, Streets, and Alleyways, to read as follows:

**ARTICLE VI. VACATING AND ABANDONMENT OF PUBLIC RIGHT
OF-WAY, STREETS, AND ALLEYWAYS**

Sec. 25-99. Procedure for abandoning, altering, closing, and vacating streets, alleys, and other public rights-of-way and portions thereof.

(a) A person ("Applicant") desiring to have the City of Marlin (the "City") exercise its powers regarding the abandoning, altering, closing, or vacating of public streets, alleys, and other public rights-of-way and portions thereof within the City, may request such action by complying with the procedures set forth below.

(b) If the public right-of-way sought to be abandoned (the "strip") was never accepted as a city street by the City and is located entirely on property (the "property") owned by requestor, requestor may file a plat (the "plat") of the property that removes the strip therefrom for approval by the City, provided:

- (1) The strip is not the sole means of road access for any property adjoining the property; and
- (2) If utility lines or other utility facilities exist in, over, or under the strip, the plat dedicates a utility easement of a size and location equal to the strip, unless the owner(s) of the utility facilities consent in writing to a different size or location of said easement.

(c) The abandonment of the strip is effective upon recording of the plat in the county plat records following its approval by the city.

(d) To request that a public street, alley, or other public right-of-way or portion thereof (the "ROW to be abandoned") be abandoned, altered, closed, or vacated where the procedure in subsection (b) is not applicable, an owner ("petitioner") of property (the "property") immediately adjacent to the ROW to be abandoned or vacated shall:

- (1) File a written Application with the city secretary, addressed to the City Council for the City of Marlin in the form as approved and authorized by the City Council attached to this Ordinance as Exhibit "A" which shall include the following:
 - a. A plot plan prepared by a Texas licensed public surveyor showing the property and the ROW to be abandoned or vacated;
 - b. A list of all owners and lessees of property abutting either: (1) the ROW to be abandoned; or (2) an adjacent road, defined as the portion of any street, alley, or public right-of-way that is contiguous to the ROW to be abandoned but not separated from the ROW to be abandoned by an intersection with another street, alley, or public right-of-way, along

with the last known address of each owner and lessee, as evidenced by the city's tax rolls;

- c. A title commitment issued by a title insurance company, showing that title to the property is vested in petitioner; or otherwise, suitable instruments demonstrating that petitioner owns the property; and
 - d. A check or money order made payable to the City of Marlin in the amount of five hundred dollars (\$500.00), as the non-refundable administrative fee for processing said petition.
- (2) Upon receipt of a petition meeting all of the requirements set forth herein, the city secretary shall:
- a. Mail notices of said petition, along with release forms, by certified mail, return receipt requested, to all owners and lessees of property abutting the property that is being requested to be abandoned, altered, closed, or vacated, and to all owners and lessees of property abutting portions of the street, alley, or public right-of-way that shall remain open; and
 - b. Make written inquiry of each of the public utilities then holding franchises from the City of Marlin, notifying them of such petition and requesting that each said franchise file with the city secretary's office within ten (10) days from the date of their written notice, their position regarding the petition and specifically stating whether they object or consent to the same.
- (3) Upon receipt by the city secretary, of waivers that release the city from any liability for abandoning the ROW to be abandoned, executed by the owners and lessees, and made binding on their heirs, assigns, and successors-in-interest, of property abutting the ROW to be abandoned or an adjacent road, the city secretary shall schedule a public hearing before City Council to address said Application and shall publish notice of the same in the city's official newspaper in accordance with state law. The public hearing shall take place after sufficient time has elapsed for mailing of the notices, return of the release forms, and publication of the public hearing.
- (4) The City Council may address said Application at a regular or special city council meeting after a public hearing has been held regarding said Application.
- (5) In the event there is an exchange of easement between the City of Marlin and any abutting property owner, said new easement shall be accepted concurrently with the abandoning, altering, closing, or vacating of a public street, alley, or public right-of-way, by city council.

- (6) Abandonment of right-of-way, if approved by the City Council, shall be by ordinance, which shall be filed following adoption with the County Clerk.
- (7) The Mayor is authorized to execute and deliver a quitclaim deed to any abutting property owner, for that portion of the abandonment, if requested by the property owner.

Sec. 25-100. Application is mandatory; content.

(a) The Application in the form as approved and authorized by the City Council attached as Exhibit "A" to this Ordinance is mandatory. Any request that a public street, alley, or other public right-of-way or portion thereof be abandoned, altered, closed, or vacated submitted to the City that does not comply with this Article shall be rejected and shall not be considered by the City Council. Incomplete Applications shall be rejected and shall not be considered by the City Council.

(b) An application for the abandonment of a public street or public alley right-of-way may be initiated only by the property owners abutting such right-of-way. The application shall contain the signatures of the owners all properties that abut the subject right-of-way and shall include proof of such ownership.

(c) All public utilities must consent in writing to the abandonment.

(d) The application shall include a plat depicting the location and physical configuration of the right-of-way to be abandoned drawn to a scale that clearly defines the limits of the abandonment. The plat shall also contain a proper metes and bounds legal description, prepared by a registered surveyor, of the proposed abandonment. If the abandonment is approved, a copy of such plat shall be attached as an exhibit to the ordinance approving such abandonment.

Sec. 25-101. Application not approved if applicant is in violation of city ordinance or owes fines or other costs.

The City Council shall not approve an Application if the Applicant's property is currently in violation of City ordinances, or if the Applicant currently owes the City any fines or costs related to any ordinance violations or unpaid utility bills for the property.

Section 3. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting the operation of vehicles within the City which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 4. Repeal and Amendment of Conflicting Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed and amended to the extent of such conflict only. In the event of a conflict or inconsistency between this Ordinance and any other

code or ordinance of the City, including any zoning regulation, the terms and provisions of this more specific and restrictive ordinance shall govern.

Section 5. Severability. If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Council in accordance with City Charter and publication as required by the Tex. *Loc. Gov't. Code.*

Section 7. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, *Tex. Gov't. Code.*

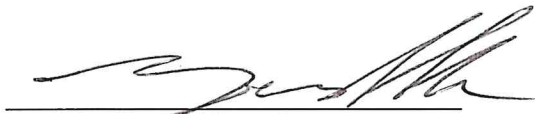
FIRST READING on the 14th day of February, 2023.

SECOND READING on the 14th day of March, 2023.

PASSED AND APPROVED on this the 14th day of March, 2023.

ATTEST:

THE CITY OF MARLIN, TEXAS



Mary Ann Waddle, City Secretary



Carolyn Lofton, Mayor

EXHIBIT "A"

**APPLICATION FOR THE VACATION/ABANDONMENT OF PUBLIC
EASEMENT/RIGHT-OF-WAY, OR ALLEYWAY AS SPECIFIED BELOW:**

☐ _____ EASEMENT SITUATED IN:

☐ _____ RIGHT-OF-WAY ADJACENT TO:

☐ _____ ALLEY WAY ADJACENT TO:

AN ADDITION TO THE CITY OF MARLIN, FALLS COUNTY, TEXAS

TO THE CITY COUNCIL FOR THE CITY OF MARLIN:

Date: _____

The undersigned hereby makes application for the vacation and abandonment of that portion of the _____ situated in or is adjacent to the above-named addition, and particularly described in Exhibits "A" and "B", attached. In support of this application, the undersigned represents, warrants and submits the following:

1. Attached as Exhibit "A" is a metes and bounds description of the area proposed for abandonment.
2. Attached as Exhibit "B" is a survey plat showing the legal description of the property rights to be abandoned and the record owners and lot boundaries of all contiguous lots, and any easements or public facilities contained in the area proposed for abandonment.
3. Attached as Exhibit "C" is the consent to such abandonment of all the abutting/impacted property owner(s), if applicable.

NOTE: INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED.

THE UNDERSIGNED WILL HOLD THE CITY OF MARLIN HARMLESS, AND INDEMNIFY IT AGAINST ALL SUITS, COSTS, EXPENSES, LOSSES, CLAIMS, AND DAMAGES THAT MAY ARISE OR GROW OUT OF THE VACATION AND ABANDONMENT APPLIED FOR HEREIN. SUCH INDEMNITY SHALL APPLY WHERE SUCH SUITS, COSTS, EXPENSES, LOSSES, DAMAGES, OR CLAIMS ARISE IN WHOLE OR PART FROM THE NEGLIGENCE OF THE CITY. IT IS THE INTENTION OF THE UNDERSIGNED AND THE CITY THAT THE UNDERSIGNED SHALL INDEMNIFY AND PROTECT THE CITY FROM CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, SHOULD SUCH OCCUR IN CONNECTION WITH THE VACATION AND ABANDONMENT APPLIED FOR HEREIN.

EXHIBIT "A"

PROPERTY OWNER:

Print Owner's Name

Signature

Date

Name and title of authorized person executing the document (if owner is a company)

Address

City

State

Zip

Phone No.

Email address

Application to Vacate/Abandon _____

The following questions should be answered completely.

1. Why does the property owner wish to vacate this easement/right-of-way or how does the property owner propose to use the area if vacated?

2. How is this easement/right-of-way currently being used?

3. Are there any public utilities or infrastructures currently located in the area proposed for abandonment? If so, describe them.

4. Applicant has made contact with abutting/impacted property owners and the following **DO NOT APPROVE** nor give their consent to this request for the reasons stated herein. If none exist, indicate as such. (Signature not required.)

Property Owner: _____

Address: _____

Lot _____ Block _____, _____ Addition

Does not consent because _____

Property Owner: _____

Address: _____

Lot _____ Block _____, _____ Addition

Does not consent because _____

Application to Vacate/Abandon _____

Exhibit "A"

Being that portion of that certain _____ situated in or adjacent to Lot(s) _____, Block(s) _____, _____ an addition to the City of Marlin, Falls County, Texas, and being more particularly described as follows:

Registered Professional Land Surveyor

Date

SEAL

Application to Vacate/Abandon _____

Exhibit "B"

The following is a survey plat of the _____ situated in or is adjacent to Lot(s) _____, Block(s) _____, _____, an addition to the City of Marlin, Falls County, Texas.

Registered Professional Land Surveyor

Date

SEAL

Application to Vacate/Abandon _____

Exhibit "C"

The undersigned, owners of property abutting/impacted by that portion of area as described in Exhibits "A" and "B" of the Application to Vacate/Abandon _____, situated in or is adjacent to Lot(s) _____, Block(s) _____, _____, an addition to the City of Marlin, Falls County, Texas, **DO HEREBY CONSENT** to such vacation and abandonment and expressly waive and release the City of Marlin for any and all claims as a result of vacation and abandonment. This waiver and release shall be binding on my heirs, assigns, and successors-in-interest.

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Application to Vacate/Abandon _____

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

**APPLICATION FOR THE VACATION/ABANDONMENT OF PUBLIC
EASEMENT/RIGHT-OF-WAY, OR ALLEYWAY AS SPECIFIED BELOW:**

☐ _____ EASEMENT SITUATED IN:

☐ _____ RIGHT-OF-WAY ADJACENT TO:

☐ _____ ALLEY WAY ADJACENT TO:

AN ADDITION TO THE CITY OF MARLIN, FALLS COUNTY, TEXAS

TO THE CITY COUNCIL FOR THE CITY OF MARLIN:

Date: _____

The undersigned hereby makes application for the vacation and abandonment of that portion of the _____ situated in or is adjacent to the above-named addition, and particularly described in Exhibits "A" and "B", attached. In support of this application, the undersigned represents, warrants and submits the following:

1. Attached as Exhibit "A" is a metes and bounds description of the area proposed for abandonment.
2. Attached as Exhibit "B" is a survey plat showing the legal description of the property rights to be abandoned and the record owners and lot boundaries of all contiguous lots, and any easements or public facilities contained in the area proposed for abandonment.
3. Attached as Exhibit "C" is the consent to such abandonment of all the abutting/impacted property owner(s), if applicable.

NOTE: INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED.

THE UNDERSIGNED WILL HOLD THE CITY OF MARLIN HARMLESS, AND INDEMNIFY IT AGAINST ALL SUITS, COSTS, EXPENSES, LOSSES, CLAIMS, AND DAMAGES THAT MAY ARISE OR GROW OUT OF THE VACATION AND ABANDONMENT APPLIED FOR HEREIN. SUCH INDEMNITY SHALL APPLY WHERE SUCH SUITS, COSTS, EXPENSES, LOSSES, DAMAGES, OR CLAIMS ARISE IN WHOLE OR PART FROM THE NEGLIGENCE OF THE CITY. IT IS THE INTENTION OF THE UNDERSIGNED AND THE CITY THAT THE UNDERSIGNED SHALL INDEMNIFY AND PROTECT THE CITY FROM CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, SHOULD SUCH OCCUR IN CONNECTION WITH THE VACATION AND ABANDONMENT APPLIED FOR HEREIN.

PROPERTY OWNER:

Print Owner's Name

Signature

Date

Name and title of authorized person executing the document (if owner is a company)

Address

City

State

Zip

Phone No.

Email address

Application to Vacate/Abandon _____

The following questions should be answered completely.

1. Why does the property owner wish to vacate this easement/right-of-way or how does the property owner propose to use the area if vacated?

2. How is this easement/right-of-way currently being used?

3. Are there any public utilities or infrastructures currently located in the area proposed for abandonment? If so, describe them.

4. Applicant has made contact with abutting/impacted property owners and the following **DO NOT APPROVE** nor give their consent to this request for the reasons stated herein. If none exist, indicate as such. (Signature not required.)

Property Owner: _____

Address: _____

Lot _____ Block _____, _____ Addition

Does not consent because _____

Property Owner: _____

Address: _____

Lot _____ Block _____, _____ Addition

Does not consent because _____

Application to Vacate/Abandon _____

Exhibit "A"

Being that portion of that certain _____ situated in or adjacent to Lot(s) _____, Block(s) _____, _____ an addition to the City of Marlin, Falls County, Texas, and being more particularly described as follows:

Registered Professional Land Surveyor

Date

SEAL

Application to Vacate/Abandon _____

Exhibit "B"

The following is a survey plat of the _____ situated in or is adjacent to Lot(s) _____, Block(s) _____, _____, an addition to the City of Marlin, Falls County, Texas.

Registered Professional Land Surveyor

Date

SEAL

Application to Vacate/Abandon _____

Exhibit "C"

The undersigned, owners of property abutting/impacted by that portion of area as described in Exhibits "A" and "B" of the Application to Vacate/Abandon _____, situated in or is adjacent to Lot(s) _____, Block(s) _____, _____, an addition to the City of Marlin, Falls County, Texas, **DO HEREBY CONSENT** to such vacation and abandonment and expressly waive and release the City of Marlin for any and all claims as a result of vacation and abandonment. This waiver and release shall be binding on my heirs, assigns, and successors-in-interest.

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

Application to Vacate/Abandon _____

Property Owner: _____

Address: _____

Lot: _____ **Block:** _____, _____ **Addition**

Signature

Date

