

City of Escanaba Policies and Procedures

Originator: City Manager's Office/City Council

Date: October 6, 2016

Subject: Abandonment of Right-of-Way Policy #10616-01

CROSS REFERENCE: The City of Escanaba has the authority pursuant to MCL S224.18, MSA A9.118, MCL 117.4 (h)1 and City Charter Chapter XII Section 1, to absolutely abandon all or part of the City right-of-way.

PURPOSE: Any request for abandonment must be heard at a properly advertised public hearing before the City Council. Please allow adequate time for the departmental review and scheduling for the public hearing at the City Council meeting. The submittal of an application for a public right-of-way abandonment does not entitle you to the abandonment.

The following procedure shall be followed in order to abandon all or part of a City right-of-way:

I. REQUEST FOR ABANDONMENT

Upon receipt of the application, all attachments, and cost recovery fee, the City will review the request and determine if the property is needed for City purposes and if it meets all development, emergency access and street construction rules and regulations. Upon recommendation, a notice will be published setting forth the date and time of the public hearing. The petitioner and/or his agent will be required to attend this public hearing in order to answer any questions the Council may have.

II. CRITERIA CONSIDERATION

The City Council will review and consider the request for abandonment based on the following criteria:

- a. Whether the proposed abandonment will adversely affect the operations and function of the City.
- b. Whether the proposed abandonment will adversely affect public access to and from the water.
- c. Whether the proposed abandonment will adversely affect pedestrian or vehicular traffic, or the commercial viability of business within three hundred (300) feet of the right-of-way to be abandoned.
- d. Whether the proposed abandonment will adversely affect a public view corridor.
- e. Whether the proposed abandonment will deprive other property owners or access to and from their property.
- f. Whether the proposed abandonment will interfere with utility services being provided, or unreasonably affect any utility easement.

III. PETITION REQUEST SUBMISSION

An Abandonment Agreement of Understanding, sealed copy of the metes and bounds description of the public right-of-way, a Plat of Detailed sketch of the Public Right of Way sought to be abandoned, along with a non-refundable abandonment administrative processing fee shall be submitted to the City Engineer.

- a. The petition shall describe the City's right-of-way in general terms or by any name by which it is known and shall specifically describe that portion which the petitioners seek to have abandoned.
- b. The petition shall be signed by all abutting property owners (or occupants if there are structures).
- c. The petition shall be accompanied by a true and correct list of the names and mailing addresses of the occupants and owners of each parcel abutting the right-of-way or portion to be abandoned. The list must state descriptions of the parcels. The list shall be certified to (under oath) by one of the petitioners.
- d. The petition shall be accompanied by a fee to cover the incurred expense by the City. Refer to the Permit Fee Schedule for the fee amount.

IV. ABANDONMENT PROCESS

Abandonment of a right of way requires the City Council make a finding of one of the following with respect to the right of way in question:

- a. That no substantial public service is served by it; or,
- b. That the removal of the right of way is in the best interest of the City.

If the petition for abandonment contains the signatures of all abutting property owners, the City of Escanaba City Council shall, within forty-five (45) days after receiving same, either grant or deny the petition without further proceedings thereon.

If the petition for abandonment does not contain the names of all of the abutting property owners, the City shall:

- a. Issue a written notice stating the object of the petition and appointing a time and place for a public hearing.
- b. Service notice, by first class mail, upon the owners and occupants of the land at least ten (10) days prior to the hearing. If the owner does not reside upon the land or cannot be found, a notice to owners shall be published in the local newspaper ten (10) days before the time of the hearing and that shall serve as record of notice.

Prior to abandoning the right-of-way or portion, The City Engineer shall coordinate with all other City departments and all other public utility operators to identify any utilities that would be affected by the abandonment described in the petition and shall report all findings of fact to the City Manager.

The City of Escanaba City Council shall determine, at the time of the passage of any resolution abandoning the right-of-way, if the abandonment is in the best interest of the public.

The vote of the City of Escanaba City Council in respect to such a determination shall be taken. The vote shall be entered at large on the City Council's records. Any abandonment request that is denied by the City Council may not be resubmitted for a period of twenty-four (24) months following the date of the denial.

The City of Escanaba City Council shall cause a true copy of the resolution, which shall contain an accurate description of the lands so abandoned, to be recorded in the office of the Delta County Registrar of Deeds.

Notice of the City of Escanaba City Council's determination shall be published in the local newspaper in each week for three (3) successive weeks. An affidavit of publication shall be filed with the City of Escanaba's City Clerk.

NOTES:

- The City of Escanaba City Council may reserve an easement for public utility purposes within the right-of-way of any road abandoned and may extinguish an easement so reserved whenever it ceases to be used for public utility purposes.
- If the abandonment results in a right-of-way becoming a dead end, the City of Escanaba City Council as a condition to granting the abandonment, may request that enough land to construct a turn-around be granted to the City of Escanaba.
- If the right-of-way in a platted area falls within 82.5 feet of a body of water, the request to abandon must go through Circuit Court – The City of Escanaba cannot abandon a platted right-of-way within 82.5 feet of a body of water.
- The City of Escanaba City Council has no jurisdiction over private right-of-ways in plats.
- Additional requirements may be instituted as necessary, including but not limited to, the installation of a fire hydrant.