

## **ORDINANCE 6-2021**

### **AN ORDINANCE CLOSING A PORTION OF A STREET RIGHT-OF-WAY BEING FOUST AVENUE BETWEEN 711 FOUST AVENUE AND 1802 WEST 7<sup>TH</sup> STREET IN THE CITY OF OWENSBORO, KENTUCKY, AT THE REQUEST OF LOCAL PROPERTY HOLDINGS, LLC.**

**WHEREAS**, Local Property Holdings, LLC has petitioned the City of Owensboro, pursuant to KRS 82.405(2) for the closing of a portion of an approximately 50 foot wide street right-of-way located between 711 Foust Avenue and 1802 West 7<sup>th</sup> Street, Owensboro, Kentucky, plat of which is attached hereto and incorporated by reference as Exhibit “A”; and

**WHEREAS**, other than Local Property Holdings, LLC, there are no adjoining and/or abutting property owners, and no further consent is required to be granted for closure of the portion of the right-of-way; and,

**WHEREAS**, the Petitioner understands and agrees to retain a public utility easement in favor of Atmos Energy, Owensboro Municipal Utilities and Regional Water Resource Agency over the portion of the proposed closure of Foust Avenue between 711 Foust Avenue and 1802 West 7<sup>th</sup> Street, as shown on Exhibit “A”; and

**WHEREAS**, pursuant to KRS 82.405(2), the Board of Commissioners of the City of Owensboro, Kentucky, makes the following findings:

1. That Local Property Holdings, LLC, the Petitioner herein, is the only property owner abutting the public right-of-way street located between 711 Foust Avenue and 1802 West 7<sup>th</sup> Street sought to be closed, and has given written, notarized consent to the closure.

2. That the closing of the public right-of-way herein would be in the best interest of the residents of the City of Owensboro, Kentucky, and will not create a hardship on any of the adjoining property owners or any person with any interest therein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** That the findings of fact recited hereinabove are hereby adopted, affirmed and incorporated by reference herein.

**Section 2.** The hereinafter described public right-of-way be, and is hereby ordered to be officially closed and abandoned pursuant to the provisions of KRS 82.405(2):

The right of way section of Foust Avenue proposed to be closed is between 711 Foust Avenue and 1802 West 7th Street, is approximately 50 foot wide and described below:

The proposed street right of way is described as beginning at a calculated point being in the east right of way line of Foust Avenue, said right of way line being 25' from its centerline and being the northwest corner of the Local Property Holdings, LLC property as recorded in Deed Book 1038, at Page 286 in the Office of the Daviess County Clerk; thence severing said Foust Avenue right of way South 86 Degrees 44 Minutes 19 Seconds West, a distance of 50.01 feet to a calculated point being in the west right of way line of Foust Avenue and being in the east property line of the Local Property Holdings, LLC property as recorded in Deed Book 1041, at Page 780 in said Clerk's Office; thence with said west right of way line North 03 Degrees 15 Minutes 58 Seconds West, a distance of 39.97 feet to a calculated point being in said east property line; thence severing said Foust Avenue right of way North 85 Degrees 59 Minutes 43 Seconds East, a distance of 50.02 feet to a calculated point being in said east right of way line and being the west property line of the Local Property Holdings, LLC, property as recorded in the Deed Book 1040, at Page 681 in said Clerk's Office; thence with said east right of way line South 03 Degrees 15 Minutes 41 Seconds East, a distance of 40.02 feet to the point of beginning and containing 1,985 square feet or 0.046 acres.

**Section 3.** The Petitioner shall dedicate by Deed of Easement or Plat a public utility easement in favor of Atmos Energy, Owensboro Municipal Utilities and Regional Water Resource Agency over the portion of the closure at Foust Avenue between 711 Foust Avenue and 1802 West 7<sup>th</sup> Street, as described herein.

**Section 4.** A copy of this Ordinance shall be recorded in the Office of the Daviess County Court Clerk.

**Section 5.** That all ordinances or parts of ordinances in conflict herewith, are to the extent of such conflict, hereby repealed.

**INTRODUCED AND PUBLICLY READ ON FIRST READING**, this 16th day of March, 2021.

**PUBLICLY READ AND FINALLY APPROVED ON SECOND READING**, this 20th day of April, 2021.

\_\_\_\_\_  
Thomas H. Watson, Mayor

ATTEST:

\_\_\_\_\_  
Beth Davis, City Clerk

#### CERTIFICATION

I, Beth Davis, City Clerk of the City of Owensboro, Kentucky, do hereby certify that the foregoing is a true and correct copy of Ordinance 6-2021 duly adopted by the Board of Commissioners of the City of Owensboro, Kentucky, on the 20th day of April, 2021, the original of which is on file in the Office of the City Clerk, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Beth Davis, City Clerk

**CITY OF OWENSBORO**

**COMMISSION MEETING DATE: 3/16/2021**

**AGENDA REQUEST AND SUMMARY SUBMITTED BY: City Engineering Department  
– Michael Hamilton**

---

**TITLE: PROPOSED CLOSING OF A PORTION OF STREET RIGHT OF WAY BEING  
FOUST AVENUE BETWEEN 711 FOUST AVENUE AND 1802 WEST 7TH STREET**

**Ordinance Prepared by:** ☒ **City Staff** ☐ **Other Preparer** ☒ **Attachments:** Request for Closure of Public Right of Way Form, Consent of Abutting Property Owner to Closure of Public Right of Way Forms, Ordinance for Closure, Alley Description and Exhibit Plat

**Summary & Background:** A request has been received from Local Property Holdings, LLC, for consideration to close a section of street right of way. The right of way section of Foust Avenue proposed to be closed is between 711 Foust Avenue and 1802 West 7<sup>th</sup> Street, is approximately 50 foot wide and described below:

The proposed street right of way is described as beginning at a calculated point being in the east right of way line of Foust Avenue, said right of way line being 25' from it's centerline and being the northwest corner of the Local Property Holdings, LLC property as recorded in Deed Book 1038, at Page 286 in the Office of the Daviess County Clerk; thence severing said Foust Avenue right of way South 86 Degrees 44 Minutes 19 Seconds West, a distance of 50.01 feet to a calculated point being in the west right of way line of Foust Avenue and being in the east property line of the Local Property Holdings, LLC property as recorded in Deed Book 1041, at Page 780 in said Clerk's Office; thence with said west right of way line North 03 Degrees 15 Minutes 58 Seconds West, a distance of 39.97 feet to a calculated point being in said east property line; thence severing said Foust Avenue right of way North 85 Degrees 59 Minutes 43 Seconds East, a distance of 50.02 feet to a calculated point being in said east right of way line and being the west property line of the Local Property Holdings, LLC, property as recorded in the Deed Book 1040, at Page 681 in said Clerk's Office; thence with said east right of way line South 03 Degrees 15 Minutes 41 Seconds East, a distance of 40.02 feet to the point of beginning and containing 1,985 square feet or 0.046 acres.

Jason Baker, Local Property Holdings, LLC, owner of property at 711 Foust Avenue and 1802 West 7<sup>th</sup> Street has signed and submitted a Request for Closure Form and the Consent of Abutting Property Owner Form for the proposed closings. Local Property Holdings, LLC is the only abutting property to the proposed street closing.

The request has been forwarded to all City departments and City Utilities. No objections were noted to the closing of this public street right of way. An easement was requested and will be retained by Regional Water Resource Agency, OMU and Atmos Energy over the portion of Foust Avenue right of way between 711 Foust Avenue and 1802 W. 7<sup>th</sup> Street proposed to be closed.

City Clerk - DRAFTED THE ORDINANCE FOR CLOSURE

**REQUEST FOR CLOSURE OF PUBLIC RIGHT-OF-WAY**

CITY ENGINEER:

The undersigned hereby requests that the right-of-way described below be closed and that the City Engineer's office make inquiry of all necessary City departments and utilities to determine if there are any reasons why the right-of-way located at: \_\_\_Foust street right-of-way in front of 711 Foust Street and 1802 West 7th street

I understand that if I do not own all the land abutting the right-of-way proposed to be closed, I will obtain the consent of all other adjoining landowners on the appropriate form provided by the City. I also agree to provide the City with the names and addresses of all abutting or otherwise affected landowners by the proposed closure.

Once the appropriate consent forms have been executed by all fee simple property owners abutting the right-of-way proposed to be closed, and have been filed with the City, I understand and agree that it shall be my responsibility to obtain and pay for the services of a licensed attorney to prepare the legal documents necessary to close public right-of-way in accordance with KRS 82.405, subject to the approval of the City Attorney.

SIGNED BY: \_\_\_\_\_

(PRINTED NAME) Jason Baker

DATE: 2/16/2021

ADDRESS: Local Property Holdings, 1535 Frederica Street, Owensboro, Ky 42301

STATE OF KENTUCKY COUNTY OF DAVIESS

The foregoing instrument was duly signed and acknowledged before me in my said County and State by

Jason Baker, on this the 16<sup>th</sup> day of February, 2021.

Brigitte R. Cook  
Notary Public, State of Kentucky at Large  
My commission expires: January 22, 2023



**CONSENT OF ABUTTING PROPERTY OWNER (S)  
TO CLOSURE OF PUBLIC RIGHT-OF-WAY**

I (We), Local Property Holdings, LLC.

, do Solemnly swear and affirm that I am (we are) the fee simple owner (s) of real property located at and known as 711 & 719 Foust Avenue and 1802 W. 7th Street

, part or all of which property abuts a part or all of public right-of-way that the City of Owensboro, Kentucky, proposes to abandon and close in conformity with **KRS 82.405**, which right-of-way is more particularly described as follows:

Foust street right-of-way in front of 711 Foust & along 1802 West 7th

I (We), as fee simple owner (s) of property in or abutting the portion of public right-of-way to proposed to be closed, do knowingly, voluntarily, and expressly waive my (our) right to written notice of the proposed closing otherwise required by **KRS 82.405 (2) (b)**, and hereby consent to, and join in the request for, the closure of said public right-of-way as proposed herein. I (We) further understand that I (we) are not required to consent to the closure of public right-of-way and may object to same. However, I (we) expressly waive any and all rights to object to the proposed closure.

I (We) further understand and acknowledge, that upon the enactment and publication of an ordinance by the Owensboro Board of Commissioners closing subject right-of-way, unless otherwise agreed, I (we) as abutting landowner (s), will receive by operation of law as my (our) own property, that portion of the right-of-way abutting my (our) property up to the center line of said right-of-way.

I further understand and acknowledge that if other fee simple owner (s) of property in or abutting the public right-of-way proposed to be closed does (do) not approve of the proposed closure, the City reserves the right to withdraw from consideration any ordinance, or dismiss any



lawsuit prosecuted herein, unless any one or all of the fee simple owner (s) of property in or abutting the right-of-way proposed to be closed, agrees (agree) to indemnify and hold the city of Owensboro harmless from any and all damages assessed against it by virtue of the initiation of eminent domain proceedings pursuant to **KRS 82.405 (3) and (4)**.

I (We) further understand and acknowledge that the City of Owensboro reserves the right to deny or qualify any request for closure of public right-of-way, if upon inquiry from all necessary City departments, utilities, and all abutting or affected property owners, it is determined that it is not in the best interest of the city to close public right-of-way or the retention of public or private utility easements or required to accommodate municipal services.

In testimony whereof, witness my (our) signature (s) on this 16th Day of February, 2021

PROPERTY OWNER (S) :

James J. Baker

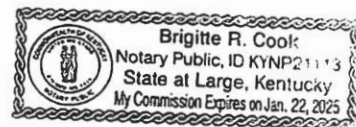
STATE OF KENTUCKY )

COUNTY OF DAVIESS )

The foregoing instrument was signed and acknowledged before me by James J. Baker  
On this the 16th day of February, 2021.

Brigitte R. Cook

NOTARY PUBLIC, State at Large  
My Commission expires: \_\_\_\_\_



DESCRIPTION FOR CLOSING:

BEGINNING AT A CALCULATED POINT BEING IN THE EAST RIGHT-OF-WAY LINE OF FOUST AVENUE, SAID RIGHT-OF-WAY LINE BEING 25' FROM IT'S CENTERLINE AND BEING THE NORTHWEST CORNER OF THE LOCAL PROPERTY HOLDINGS, LLC. PROPERTY AS RECORDED IN DEED BOOK 1038, AT PAGE 286 IN THE OFFICE OF THE DAVIESS COUNTY CLERK; THENCE SEVERING SAID FOUST AVENUE RIGHT-OF-WAY SOUTH 86 DEGREES 44 MINUTES 19 SECONDS WEST, A DISTANCE OF 50.01 FEET TO A CALCULATED POINT BEING IN THE WEST RIGHT-OF-WAY LINE OF FOUST AVENUE AND BEING IN THE EAST PROPERTY LINE OF THE LOCAL PROPERTY HOLDINGS, LLC. PROPERTY AS RECORDED IN DEED BOOK 1041, AT PAGE 780 IN SAID CLERK'S OFFICE; THENCE WITH SAID WEST RIGHT-OF-WAY LINE NORTH 03 DEGREES 15 MINUTES 58 SECONDS WEST, A DISTANCE OF 39.37 FEET TO A CALCULATED POINT BEING IN SAID EAST PROPERTY LINE; THENCE SEVERING SAID FOUST AVENUE RIGHT-OF-WAY NORTH 85 DEGREES 59 MINUTES 43 SECONDS EAST, A DISTANCE OF 50.02 FEET TO A CALCULATED POINT BEING IN SAID EAST RIGHT-OF-WAY LINE AND BEING IN THE WEST PROPERTY LINE OF THE LOCAL PROPERTY HOLDINGS, LLC. PROPERTY AS RECORDED IN DEED BOOK 1040, AT PAGE 681 IN SAID CLERK'S OFFICE; THENCE WITH SAID EAST RIGHT-OF-WAY LINE SOUTH 03 DEGREES 15 MINUTES 41 SECONDS EAST, A DISTANCE OF 40.02 FEET TO THE POINT OF BEGINNING AND CONTAINING 1,985 SQUARE FEET OR 0.046 ACRES.



1802 W. 7th STREET  
LOCAL PROPERTY  
HOLDINGS, LLC.  
D.B. 1041, PG. 780  
PVA PARCEL 5-5-7-1

1,985 S.F.  
0.046 ACRES

W. 7th STREET

FOUST AVE.

711 FOUST AVENUE  
LOCAL PROPERTY  
HOLDINGS, LLC.  
D.B. 1040, PG. 681  
PVA PARCEL 5-5-6-7

N 85°59'43" E

50.02'

N 03°15'58" W

39.37'

S 03°15'41" E

40.02'

50.01'

S 86°44'19" W

PORTION OF FOUST AVENUE  
(CLOSED PER ORDINANCE  
NO. 47-65, DATED 08-20-1965)

PORTION OF FOUST AVENUE  
(CLOSED PER ORDINANCE  
NO. 47-65, DATED 08-20-1965)

719 FOUST AVENUE  
LOCAL PROPERTY  
HOLDINGS, LLC.  
D.B. 1038, PG. 286  
PVA PARCEL 5-5-6-5

CLIENT

LOCAL PROPERTY HOLDING, LLC.  
1535 FREDERICA STREET  
OWENSBORO, KY 42301

PURPOSE:

TO SHOW AND DESCRIBE THE PROPOSED  
STREET CLOSING.

SURVEYOR NOTES:

THE PROPERTY AND DESCRIPTION SHOWN HEREON DOES  
NOT CONSTITUTE A BOUNDARY SURVEY AND SHALL NOT  
BE USED FOR THE TRANSFER OF REAL PROPERTY.

COMPLIES WITH 201 KAR18:150 SECTION 13.  
NOT A BOUNDARY SURVEY.  
NOT FOR TRANSFER OF REAL PROPERTY.

PREPARED BY:



*J. William Weikel, Jr.*  
J. WILLIAM WEIKEL, JR., KY. P.L.S. NO. 2813 DATE *March 2 2021*

EXHIBIT "A"  
PROPOSED STREET  
CLOSING

SCALE: 1"=30' / DATE: 1-28-2021



1535 FREDERICA STREET ~ P.O. BOX 21382  
OWENSBORO, KENTUCKY 42304  
270-685-2811