

## **ORDINANCE 11-2022**

### **AN ORDINANCE CLOSING A PORTION OF THE ALLEY RIGHT-OF-WAY LOCATED BETWEEN 408 FREDERICA STREET AND 322 WEST FOURTH STREET IN THE CITY OF OWENSBORO, KENTUCKY.**

**WHEREAS**, Rivercity Trio I LLC (Petitioner), has petitioned the City of Owensboro pursuant to KRS 82.405(2) to close a portion of the alley right-of-way located between 408 Frederica Street and 322 West Fourth Street, Owensboro, Kentucky, plat of which is attached hereto and incorporated by reference as Exhibit A; and

**WHEREAS**, adjoining and abutting property owner, Theatre Workshop of Owensboro, Inc. has given a written and notarized consent to the closing of said alley right-of-way as evidenced in the *Consent of Abutting Property Owner to Closure of Public Right-of-Way* heretofore filed, a copy of which is attached and incorporated by reference as Exhibit B; and

**WHEREAS**, the Petitioner understands and agrees to retain a public utility easement in favor of Owensboro Municipal Utilities, Regional Water Resource Agency, AT&T and Spectrum within the alley to be closed 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 the Petitioner, Rivercity Trio I LLC, has given written, notarized consent to the closing and abandonment of the public alley right-of-way described hereinabove, a copy of Applicant's *Request for Closure of Public Right-of-Way* is attached hereto.
2. That Rivercity Trio I LLC, the Petitioner herein, and Theatre Workshop of Owensboro, Inc. are the only property owners abutting and adjoining the public alley right-of-way located between 408 Frederica Street and 322 West Fourth Street sought to be closed, and have given written, notarized consent to the closure, copies of which are attached hereto.
3. That the closing of the public alley right-of-way to be abandoned 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 proposed alley right of way is described as beginning at a calculated point in the south right of way line of West Fourth Street, being the northwest corner of the Rivercity Trio I LLC. Tract as recorded in Deed Book 1001 at Page 56 and Plat Book 6 at Page 227 in the Office of the Daviess County Clerk, also being the northeast corner of a 12 foot alley; thence with the west line of said Rivercity Trio property South 03 degrees 51 minutes 40 seconds East, a distance of 158.91 feet to a calculated point, being the northwest corner of the Theater Workshop of Owensboro, Inc. property as recorded in Deed Book 889 at Page 142 in said clerk's office; thence severing said 12 foot alley South 87 degrees 37 minutes 22 seconds West, a distance of 12.00 feet to a calculated point being in the east line of another Rivercity Trio I LLC property as recorded in Deed Book 1001 at Page 56 and Plat Book 28 at Page 293 in said clerk's office; thence with said west line North 03 degrees 51 minutes 40 seconds West, a distance of 158.95 feet to a calculated point in said south right of way line of West Fourth Street; thence with said south right of way line North 86 degrees 48 minutes 34 seconds East, a distance of 12.00 feet to the point of beginning and containing 0.044 acres or 1,907 square feet.

**Section 3.** The Petitioner shall dedicate by deed of easement or plat a public utility easement in favor of Owensboro Municipal Utilities, Regional Water Resource Agency, AT&T and Spectrum within the alley to be closed.

**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 17th day of May, 2022.

**PUBLICLY READ AND FINALLY APPROVED ON SECOND READING**, this 7th day of June, 2022.

\_\_\_\_\_  
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 11-2022 duly adopted by the Board of Commissioners of the City of Owensboro, Kentucky, on the 7th day of May, 2022, the original of which is on file in the Office of the City Clerk, on this the 7th day of May, 2022.

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

**CITY OF OWENSBORO**

**COMMISSION MEETING DATE: 5/17/2022**

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

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**TITLE: PROPOSED CLOSING OF A PORTION OF ALLEY RIGHT OF WAY BETWEEN 408 FREDERICA STREET AND 322 W. 4<sup>TH</sup> 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 Rivercity Trio I LLC., for consideration to close a section of alley right of way between 408 Frederica Street and 322 W. 4<sup>th</sup> Street, being 12 foot wide and described below:

The proposed alley right of way is described as beginning at a calculated point in the south right of way line of West Fourth Street, being the northwest corner of the Rivercity Trio I LLC. Tract as recorded in Deed Book 1001 at Page 56 and Plat Book 6 at Page 227 in the Office of the Daviess County Clerk, also being the northeast corner of a 12 foot alley; thence with the west line of said Rivercity Trio property South 03 degrees 51 minutes 40 seconds East, a distance of 158.91 feet to a calculated point, being the northwest corner of the Theater Workshop of Owensboro, Inc. property as recorded in Deed Book 889 at Page 142 in said clerk's office; thence severing said 12 foot alley South 87 degrees 37 minutes 22 seconds West, a distance of 12.00 feet to a calculated point being in the east line of another Rivercity Trio I LLC. property as recorded in Deed Book 1001 at Page 56 and Plat Book 28 at Page 293 in said clerk's office; thence with said west line North 03 degrees 51 minutes 40 seconds West, a distance of 158.95 feet to a calculated point in said south right of way line of West Fourth Street; thence with said south right of way line North 86 degrees 48 minutes 34 seconds East, a distance of 12.00 feet to the point of beginning and containing 0.044 acres or 1,907 square feet.

Matthew R. Hayden, Rivercity Trio I LLC, owner of property at both 408 Frederica Street and 322 W. 4<sup>th</sup> Street has signed and submitted a Request for Closure Form and Consent of Abutting Property Owner Form for the proposed closing. Rivercity Trio I LLC property at 408 Frederica Street and 322 W. 4<sup>th</sup> Street are abutting properties to the proposed closing. The Theatre Workshop of Owensboro, also owns property that abuts the proposed alley to be closed and has signed and return a Consent of Abutting Property Owner Form for the proposed closing. Other properties (420, 422, and 428 Frederica Street), properties within the block range of the proposed closure have been notified of the proposed closing through mail by the applicant, Rivercity Trio I LLC.

The request has been forwarded to all City departments and City Utilities. No objections were noted to the closing of the public alley rights of way. An easement was requested and will be retained on the closed alley area by OMU Electric and Water, AT&T, RWRA, and Spectrum Cable along their facilities within the proposed closed alley right of way behind 408 Frederica Street.

Mark Pfeifer, City Attorney - DRAFTED THE ORDINANCE FOR CLOSURE

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

CITY ENGINEER:

The undersigned, on behalf of RiverCity Trio I, LLC, 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 which is more particularly described as: The portion of alley that is proposed to be closed is that portion that extends approximately 170 linear feet +/- south from Fourth street (see attached Exhibit A) and is bordered on both sides by property owned by RiverCity Trio I, LLC, which is petitioning the City for the closure. This portion of the alley has been closed to the public for many years and has been maintained by RiverCity Trio I, LLC or its predecessors while operating as an automobile sales lot. The closure is in the furtherance of a public private partnership economic development project to provide additional housing and commerce in the downtown area which will likely increase the values of the property surrounding the new development. I understand that if I (We) do not own all the land abutting the portion of 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.

*//Signature page follows//*

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

(PRINTED NAME) Matthew R. Hayden, Member

DATE: 11 April 2022

ADDRESS: 2960 Fairview Drive, Owensboro KY

STATE OF KENTUCKY )

COUNTY OF DAVIESS )

The foregoing instrument was duly signed and acknowledged before me in my said County and State by Matthew R. Hayden, on this the 11th day of April, 2022.

Robin Williams Phillips

Notary Public, State of Kentucky at Large

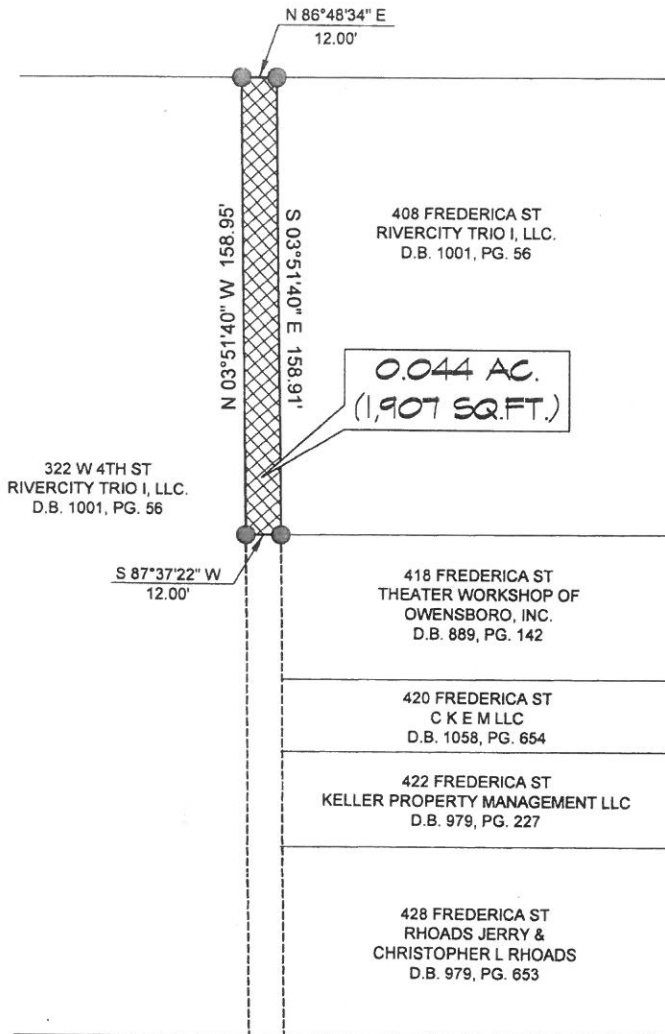
My commission expires: 3-14-2026



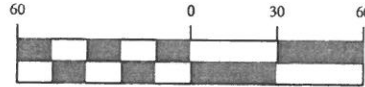
## EXHIBIT A



# WEST 4th STREET



## GRAPHIC SCALE



( IN FEET )

1 inch = 60 feet

**PURPOSE:**  
TO SHOW AND DESCRIBE  
THE PROPOSED ALLEY 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.

FREDERICA STREET



# WEST 5th STREET

## DESCRIPTION

A certain tract of land being located in Owensboro, Daviess County, Kentucky and being more particularly described as follows:

Beginning at a calculated point in the south right-of-way line of West Fourth Street, being the northwest corner of the Rivercity Trio I LLC tract as recorded in Deed Book 1001 at Page 56 and Plat Book 6 at Page 227 in the Office of the Daviess County Clerk, also being the northeast corner of a 12' foot alley; thence with the west line of said Rivercity Trio property South 03 degrees 51 minutes 40 seconds East, a distance of 158.91 feet to a calculated point, being the northwest corner of the Theater Workshop of Owensboro, INC. property as recorded in Deed Book 889 at Page 142 in said clerk's office; thence severing said 12 foot alley South 87 degrees 37 minutes 22 seconds West, a distance of 12.00 feet to a calculated point being in the east line of another Rivercity Trio I LLC property as recorded in Deed Book 1001 at Page 56 and Plat Book 28 at Page 293 in said clerk's office; thence with said west line North 03 degrees 51 minutes 40 seconds West, a distance of 158.95 feet to a calculated point in said south right-of-way line of West Fourth Street; thence with said south right-of-way line North 86 degrees 48 minutes 34 seconds East, a distance of 12.00 feet to the point of beginning and containing 0.044 acres or 1,907 square feet.

The property description shown hereon does not constitute a boundary survey and shall not be used for the transfer of real property.

## PREPARED BY:

*Mark A. Phelps*  
MARK A. PHELPS, KY. P.L.S. NO. 4420

3-21-22  
DATE



## CLIENT

RIVERCITY TRIO I LLC  
2960 FAIRVIEW DR  
OWENSBORO KY 42303-2171

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

## EXHIBIT "A" PROPOSED ALLEY CLOSING

DATE: 03-14-2022



## EXHIBIT B

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

I (We), Matthew R. Hayden on behalf of RiverCity Trio I, LLC, do Solemnly swear and affirm that I am (we are) the fee simple owner (s) of real property located at and known as 408 Frederica Street and 322 W 4<sup>th</sup> Street, Owensboro, KY, part 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 in Exhibit A which is attached hereto and incorporated herein.

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 11th day of April ,2022

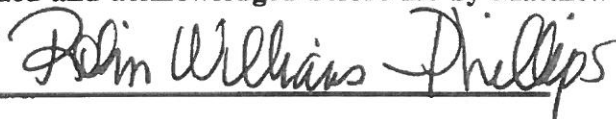
**PROPERTY OWNER (S):**



Matthew R. Hayden, Member

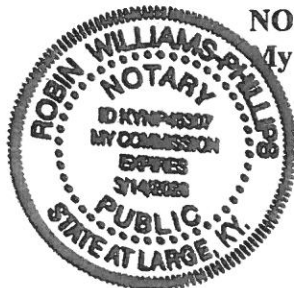
STATE OF KENTUCKY   )  
  )  
COUNTY OF DAVIESS   )

The foregoing instrument was signed and acknowledged before me by Matthew R. Hayden on this the 11<sup>th</sup> day of April 2022.



NOTARY PUBLIC, State at Large

My Commission expires: 3-14-2026



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

I(We), Theatre Workshop of Owensboro Inc.

,do Solemnly swear and affirm that I am (we are) the fee simple owner (s) of real property located at and known as 418 Frederica 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:

A section of alley right of way running north/south between 408 Frederica Street and 322 W. 4<sup>th</sup> Street. More particularly described as beginning at a calculated point in the south right of way line of West Fourth Street, being the northwest corner of the Rivercity Trio I LLC. Tract as recorded in Deed Book 1001 at Page 56 and Plat Book 6 at Page 227 in the Office of the Daviess County Clerk, also being the northeast corner of a 12 foot alley; thence with the west line of said Rivercity Trio property South 03 degrees 51 minutes 40 seconds East, a distance of 158.91 feet to a calculated point, being the northwest corner of the Theater Workshop of Owensboro, Inc. property as recorded in Deed Book 889 at Page 142 in said clerk's office; thence severing said 12 foot alley South 87 degrees 37 minutes 22 seconds West, a distance of 12.00 feet to a calculated point being in the east line of another Rivercity Trio I LLC. property as recorded in Deed Book 1001 at Page 56 and Plat Book 28 at Page 293 in said clerk's office; thence with said west line North 03 degrees 51 minutes 40 seconds West, a distance of 158.95 feet to a calculated point in said south right of way line of West Fourth Street; thence with said south right of way line North 86 degrees 48 minutes 34 seconds East, a distance of 12.00 feet to the point of beginning and containing 0.044 acres or 1,907 square feet.

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 13th Day of May, 2022

**PROPERTY OWNER (S) :**

Theatre Workshop of Owensboro

By Todd Reynolds

STATE OF KENTUCKY )

COUNTY OF DAVIESS )

The foregoing instrument was signed and acknowledged before me by Todd Reynolds  
On this the 13th day of May, 2022.

Kimberly A. Rogers

NOTARY PUBLIC, State at Large

My Commission expires: 11/3/26

ID# KYNP 42340

**NOTIFICATION OF PROPERTY OWNER (S) TO THE  
PROPOSED CLOSURE OF PUBLIC RIGHT-OF-WAY IN THE IMMEDIATE AREA \***

I (We), Theater Workshop of Owensboro, Inc, do Solemnly swear and affirm that I am (we are) the fee simple owner (s) of real property located at and known as 418 Frederica Street part or all of which property is in located in the block that adjoins the public right of way where 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 in the attached Exhibit A

I (We), as fee simple owner (s) of property mentioned above, do knowingly affirm that I(We) have been notified of said public right-of-way closure as proposed herein and that if I(We) should have any objections to this closing I(We) am to contact the City Engineers Office in writing at 1410 W 5<sup>th</sup> Street Owensboro, KY 42302 within 14 Days of the date notified.

In conformity with **KRS 82.405**, this proposed public right of way closing will be advertised and reviewed twice for approval by the City Commission at a public commission meeting.

In testimony whereof, witness my (our) signature (s) on this 9<sup>th</sup> Day of May 2022.

“Signatures on following page”



PROPERTY OWNER (S) :

Thimble Workshop of Owensboro  
By Todd Reynolds

STATE OF KENTUCKY     )  
  )  
COUNTY OF DAVIESS     )

The foregoing instrument was signed and acknowledged before me by

Todd Reynolds , on this the 9th day of May, 2022.

Kimberly A. Tignor  
NOTARY PUBLIC, State at Large  
My Commission expires: 11/3/26  
ID# KYNIP 42340

\* This form only applies to improved right of ways