

ORDINANCE 30-2022

AN ORDINANCE CLOSING THE ALLEY RIGHT-OF-WAY BETWEEN 1410 WEST 5TH STREET AND PROPERTIES FROM 1508 TO 1438 WEST 5TH STREET IN THE CITY OF OWENSBORO, KENTUCKY.

WHEREAS, the City of Owensboro pursuant to KRS 82.405(2) desires to close the alley right-of-way located between 1410 West 5th Street and properties from 1508 to 1438 West 5th Street, Owensboro, Kentucky, plat of which is attached hereto and incorporated by reference as Exhibit “A”; and

WHEREAS, adjoining and abutting property owners, City of Owensboro and N S C Owensboro West 5th Street, LLC, have given their written notarized consents to the closing of said alley right-of-way as evidenced in the *Consent of Abutting Property Owner(s) to Closure of Public Right-of-Way* heretofore filed, copies of which are attached and incorporated by reference as Exhibit “B”; 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, the City of Owensboro, 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. Written notice of the proposed closing was given to all property owners in or abutting the right-of-way being closed.

3. That the City of Owensboro, the Petitioner herein, and N S C Owensboro West 5th Street, LLC are the only property owners abutting and adjoining the public alley right-of-way located between 1410 West 5th Street and properties from 1508 to 1438 West 5th Street sought to be closed, and have given written, notarized consent to the closure, copies of which are attached hereto.
4. 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):

An alley right-of-way located adjacent to 1410 West 5th Street in Owensboro, Kentucky more particularly described as follows:

Beginning at an iron pipe found in the south right-of-way line of West 5th Street, said point also being in the east margin of a 15' alley and being a corner to the City of Owensboro (P.B. 31, pg. 08); thence following the line of the City of Owensboro S 04°04'08" E, 133.21 feet to an iron pipe found with cap stamped PLS 2643; thence following the line of the City of Owensboro S 85°53'55" W, 192.85 feet to an unmarked point being N 07°20'24" W, 5.00 feet from an iron pipe found with cap stamped PLS 2643, said point being in the east line of N S C Owensboro West 5TH Street LLC (D.B. 1057, Pg. 483); thence following the east line of N S C Owensboro West 5TH Street LLC N 07°20'24" W, 12.65 feet to an unmarked point being the southwest corner of the City of Owensboro (D.B. 1073, Pg. 480); thence following the south line of the City of Owensboro N 85°52'32" E, 47.07 feet

to an unmarked point being the southwest corner of the City of Owensboro (D.B. 1073, Pg. 860); thence following the lines of the City of Owensboro as follows: N 04°04'08" W, 3.08 feet to an unmarked point; thence N 85°52'32" E, 31.00 feet to an unmarked point; thence N 04°04'08" W, 3.42 feet to an unmarked point; thence N 85°52'32" E, 48.50 feet to an unmarked point; thence N 04°04'08" W, 11.00 feet to an unmarked point; thence N 85°52'32" E, 52.00 feet to an unmarked point; thence N 04°04'08" W, 103.00 feet to an unmarked point in the south right-of-way line of West 5th Street; thence following the south right-of-way line of West 5th Street N 85°52'32" E, 15.00 feet to the point of beginning containing 0.128 Acres according to a field survey performed by Kevin M. Simmons, PLS 3635 on 11-18-2022.

Section 3. A copy of this Ordinance shall be recorded in the Office of the Daviess County Court Clerk.

Section 4. 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 6th day of December, 2022.

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING, this 20th day of December, 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 30-2022 duly adopted by the Board of Commissioners of the City of Owensboro, Kentucky, on the 20th day of December, 2022, the original of which is on file in the Office of the City Clerk, on this the 20th day of December, 2022.

Beth Davis, City Clerk

EXHIBIT “A”

CITY OF OWENSBORO

COMMISSION MEETING DATE: 12/6/2022

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

TITLE: PROPOSED CLOSING OF ALLEY RIGHT OF WAY BETWEEN 1410 WEST 5TH STREET AND PROPERTIES FROM 1508 TO 1438 WEST 5TH 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, Exhibit Map, and Surveyed Description

Summary & Background: A request has been signed and submitted by the City of Owensboro, for consideration to close alley right of way between 1410 W. 5th Street and 1508 to 1438 W. 5th Street, being varying width and described below:

The proposed alley right of way is generally described as beginning at a point in the south right of way of W. 5th Street approximately 416' east of the east right of way line of Castlen Street and also being the northwest corner of 1410 W. 5th Street property belonging to the City of Owensboro; thence heading south along the west property line of 1410 W. 5th Street for approximately 133' to a property corner; thence west along the north property line of 1410 W. 5th Street for 193' to a point in the east property line of 525 Castlen Street owned by NSC Owensboro West 5th Street LLC; thence north along the east property line for 18' of 525 Castlen Street to the southwest property corner 1508 W. 5th Street owned by the City of Owensboro; thence east along the south and east property lines of 1508, 1504, & 1500 W. 5th Street, all owned by the City of Owensboro in varying lengths to a point being the southwest corner of 1438 W. 5th Street; thence east along south property line of 1438 W. 5th Street for 52' to the southeast corner of 1438 W. 5th Street; thence north 103' along the east property line of 1438 W. 5th Street to the northeast corner of 1438 W. 5th Street a point being in the south right of way of 5th Street; thence east along the south right of way of 5th Street for 15' to the point of beginning containing 0.13 acres or 5,657 square feet. (More accurately described in the attached surveyed description)

The City of Owensboro, owner of property at 1410 W. 5th Street, 1438 W. 5th Street, 1500 W. 5th Street, 1504 W. 5th Street, and 1508 W. 5th Street has signed and submitted a Request for Closure Form and Consent of Abutting Property Owner Form for the proposed closing. NSC Owensboro West 5th Street LLC, owns property at 525 Castlen Street and is the only other abutting properties to the proposed closing, has signed and return a Consent of Abutting Property Owner Form for the proposed closing.

The request has been forwarded to all City departments and City Utilities. No objections were noted to the closing of the public alley right of way. No easement was requested and will not be required with this right of way closing

Mark Pfeifer, City Attorney - 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:

Between 1410 West 5th Street to the east and south and 1438-1508 West 5th Street to the north
should not be closed.

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: Thomas H. Watson

(PRINTED NAME) Thomas H. Watson

DATE: 11/21/22

ADDRESS: P.O. Box 10003, Owensboro Ky 42302-9003

STATE OF KENTUCKY)

COUNTY OF DAVIESS)

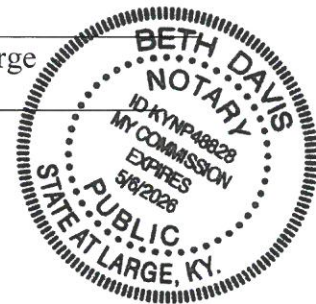
The foregoing instrument was duly signed and acknowledged before me in my said County and State by

Thomas H. Watson, on this the 21st day of November, 2022.

Beth Davis

Notary Public, State of Kentucky at Large

My commission expires: _____



WEST 5TH STREET

N 85°52'32" E

15.00'

N 04°04'08" W

103.00'

S 04°04'08" E

133.21'

N 85°52'32" E

52.00'

0.128 ACRES

LINE	BEARING	DISTANCE
L1	N 07°20'24" W	12.65'
L2	N 04°04'08" W	3.08'
L3	N 04°04'08" W	3.42'
L4	N 04°04'08" W	11.00'
L5	N 07°20'24" W	5.00'

N 85°52'32" E

48.50'

N 85°52'32" E

31.00'

N 85°52'32" E

47.07'

192.85'

S 85°53'55" W



City of Owensboro Kentucky

P.O. BOX 10003
OWENSBORO, KENTUCKY 42302

Engineering Department
270-687-8641
270-687-8579 (fax)

LEGAL DESCRIPTION

An alley right-of-way located adjacent to 1410 West 5th Street in Owensboro, Kentucky more particularly described as follows:

Beginning at an iron pipe found in the south right-of-way line of West 5th Street, said point also being in the east margin of a 15' alley and being a corner to the City of Owensboro (P.B. 31, pg. 08); thence following the line of the City of Owensboro S 04°04'08" E, 133.21 feet to an iron pipe found with cap stamped PLS 2643; thence following the line of the City of Owensboro S 85°53'55" W, 192.85 feet to an unmarked point being N 07°20'24" W, 5.00 feet from an iron pipe found with cap stamped PLS 2643, said point being in the east line of N S C Owensboro West 5TH Street LLC (D.B. 1057, Pg. 483); thence following the east line of N S C Owensboro West 5TH Street LLC N 07°20'24" W, 12.65 feet to an unmarked point being the southwest corner of the City of Owensboro (D.B. 1073, Pg. 480); thence following the south line of the City of Owensboro N 85°52'32" E, 47.07 feet to an unmarked point being the southwest corner of the City of Owensboro (D.B. 1073, Pg. 860); thence following the lines of the City of Owensboro as follows:

N 04°04'08" W, 3.08 feet to an unmarked point; thence
N 85°52'32" E, 31.00 feet to an unmarked point; thence
N 04°04'08" W, 3.42 feet to an unmarked point; thence
N 85°52'32" E, 48.50 feet to an unmarked point; thence
N 04°04'08" W, 11.00 feet to an unmarked point; thence
N 85°52'32" E, 52.00 feet to an unmarked point; thence

N 04°04'08" W, 103.00 feet to an unmarked point in the south right-of-way line of West 5th Street; thence following the south right-of-way line of West 5th Street N 85°52'32" E, 15.00 feet to the point of beginning containing 0.128 Acres according to a field survey performed by Kevin M. Simmons, PLS 3635 on 11-18-2022.

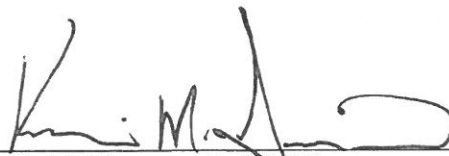

Kevin M. Simmons, PLS 3635 11-29-22
Date



EXHIBIT “B”

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

I(We), _____ CITY _____ OF _____ OWENSBORO _____

,do Solemnly swear and affirm that I am (we are) the fee simple owner (s) of real property located at and known as _____ 1410, 1438, 1500, 1504, & 1508 West 5TH 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 starting in the south right of way of W. 5th Street bordered by 1410 West 5th Street to the east and south, properties 1438,1500, 1504, & 1508 W. 5th Street to the north, and 525 Castlen Street the west (See attached Exhibit Map).

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 21st Day of November, 2022.

PROPERTY OWNER (S) :

Thomas H. Watson

STATE OF KENTUCKY)

COUNTY OF DAVIESS)

The foregoing instrument was signed and acknowledged before me by Thomas H. Watson
On this the 21st day of November, 2022

Beth Davis

NOTARY PUBLIC, State at Large
My Commission expires: _____



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

I(We), N S C OWENSBORO WEST 5TH STREET LLC

,do solemnly swear and affirm that I am (we are) the fee simple owner(s) of real property located at and known as 525 Castlen Street (PVA Map # 005-05-02-027-00-000)

,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 starting in the south right of way of W. 5th Street bordered by 1410 West 5th Street to the east and south, properties 1438,1500, 1504, & 1508 W. 5th Street to the north, and 525 Castlen Street to the west (See attached Exhibit Map).

I (We), as fee simple owner(s) of property in or abutting the portion of public right-of-way 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 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 1 day of September, 2022.

PROPERTY OWNER (S) :

[Signature]

STATE OF Michigan)

COUNTY OF Oakland)

The foregoing instrument was signed and acknowledged before me by Michael Pogoda, for and on behalf of NSQ Owensboro West 5th Street LLC, on this the 1ST day of September, 2022.

[Signature: David A. Destross]

NOTARY PUBLIC, State at Large
My Commission expires: 03/29/2028

