

INTRODUCED: March 9, 2015

AN ORDINANCE No. 2015-51-62

To amend Ord. No. 2014-188-173, adopted Oct. 13, 2014, which closed to public use and travel a portion of right-of-way known as Lewis Street, located between its intersection with Williamsburg Road and its intersection with a CSX Transportation, Inc. right-of-way and consisting of 24,300± square feet and a portion of right-of-way known as 37th Street, located between its intersection with Lewis Street and its intersection with Nicholson Street and consisting of 5,985± square feet, for the purpose of modifying certain terms and conditions upon which the portion of right-of-way was closed.

Patron – Mayor Jones (By Request)

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 13 2015 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

I. That Ordinance No. 2014-188-173, adopted October 13, 2014, be and is hereby amended and reordained as follows:

§ 1. That a portion of right-of-way known as Lewis Street, located between its intersection with Williamsburg Road and its intersection with a CSX Transportation, Inc. right-of-way and consisting of approximately 24,300 square feet, and a portion of right-of-way known as 37th Street, located between its intersection with Lewis Street and its intersection with

AYES: 7 NOES: 0 ABSTAIN: _____

ADOPTED: APR 13 2015 REJECTED: _____ STRICKEN: _____

Nicholson Street and consisting of approximately 5,985 square feet, are hereby closed to public use and travel as rights-of-way of the City of Richmond, as shown enclosed with bold lines on a drawing prepared by the Department of Public Works, designated as DPW Drawing No. N-28609, dated August 11, 2014, and entitled “Proposed Closing to Public Use and Travel of Portions of Public Rights-of-Way Known as Lewis St and 37th St Located North of Nicholson St, West and South of Williamsburg Road and East of Properties Owned by CSX,” a copy of which drawing is attached to this ordinance.

§ 2. That section 1 of this ordinance shall become effective only when, within 12 months from the day this ordinance is adopted, the following conditions set forth in this section have been satisfied:

(a) The applicants bear all costs associated with the closing, including, but not limited to, realignment, relocation or removal of utilities or infrastructure, installation of new utilities or infrastructure, new or revised street name or directional signs, streetlights, and similar infrastructure, as required by City agencies, and agree in writing with the City that, for themselves, their successors and their assigns, they shall, to the extent permitted by law, indemnify, reimburse, and keep and hold the City free and harmless from liability on account of injury or damage to persons, firms, corporations or property, which may result directly or indirectly from the closing of the right-of-way to public use and travel by this ordinance and from the interference with the drainage, flow or overflow of surface or subsurface water resulting directly or indirectly therefrom; and in the event that any suit or proceeding is brought against the City at law or in equity, either independently or jointly with the owner or owners of all the property abutting the aforesaid right-of-way, or any of them, on account thereof, they shall defend the City in any such suit or proceeding at its cost; and in the event of a final judgment or

decree being obtained against the City, either independently or jointly with the property owner or owners granting consent for the aforesaid right-of-way to be closed to public use and travel, they shall pay such judgment or comply with such decree including payment of all costs and expenses or whatsoever nature and hold the City harmless therefrom.

(b) The applicants make arrangements satisfactory to public utility or public service corporations whose properties or facilities are in the right-of-way area to be closed either for the removal, relocation or abandonment thereof or for the construction, reconstruction, maintenance and repair thereof, evidence of which shall be in writing, approved as to form by the City Attorney, and filed in the Office of the City Clerk.

(c) The applicants obtain consent to the closing from each of the owners of land, buildings or structures from whom consent is required under section 90-327 of the Code of the City of Richmond (2004), as amended, which consents shall be in writing, approved as to form by the City Attorney, and filed in the Office of the City Clerk.

(d) The applicants pay the sum of \$13,325.40 to the City for the right-of-way to be closed. This condition is satisfied when all abutting property owners execute an agreement to purchase the right-of-way area to be closed, which such agreement being in accordance with section 15.2-2008 of the Code of Virginia (1950), as amended, and approved as to form and legality by the City Attorney. If any property owner fails to make the payment for such owner's fractional portion within 12 months after the day on which this ordinance is adopted, then the closing provided for in section 1 of this ordinance shall be null and void.

(e) The applicants remove all cobblestones, bricks, granite curbs, granite stones, granite blocks and other infrastructure materials from the right-of-way area to be closed and deliver all such cobblestones, bricks, granite curbs, granite stones, granite blocks and other

infrastructure materials in an undamaged and cleaned condition to a location determined by the Director of Public Works.

(f) The applicants obtain, in accordance with Chapter 114, Article X, Division 6 of the Code of the City of Richmond (2004), as amended, a special use permit for the proposed brewery project on the adjacent properties known as 3409 Williamsburg Avenue, 4300 Williamsburg Avenue, 116 Nicholson Street and 108 Nicholson Street for which the right-of-way are to be closed.

(g) The applicants, at their sole cost, obtain a plat, sealed by a land surveyor licensed by the Commonwealth of Virginia, showing the exact extent and dimensions of the rights-of-way to be closed and provide a copy to the Department of Public Works and the Office of the City Attorney within 12 months after the day on which this ordinance is adopted.

(h) The applicants satisfy all terms and conditions requisite for the closing of the right-of-way area to be closed by this ordinance and provide the Division of Permits and Inspections of the Department of Planning and Development Review, the Office of the City Attorney and the Office of the City Clerk with written evidence that all terms and conditions of this ordinance have been satisfied.

§ 3. That, at such time as section 1 of this ordinance becomes effective, the City shall have no further right, title or interest in the closed rights-of-way other than that expressly retained under the provisions of this ordinance or granted to satisfy the terms and conditions set out in this ordinance.

§ 4. This ordinance shall be in force and effect upon adoption.

II. This amendatory ordinance shall be in force and effect upon adoption.



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: March 6, 2015 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor (By Request)

RECEIVED

THROUGH: Christopher L. Beschler, Acting Chief Administrative Officer

MAR 09 2015

THROUGH: Peter L. Downey
Deputy Chief Administrative Officer

OFFICE OF CITY ATTORNEY

FROM: Jane Ferrara
Deputy Director, Economic & Community Development

RE: AMENDMENT TO ORDINANCE NO. 2014-188-173

ORD. OR RES No. _____

PURPOSE: To amend Ordinance No. 2014-188-173 (the "Ordinance") by adding the words ", to the extent permitted by law," after the word shall in the fifth line of § 2(a) of the ordinance.

REASON: The Ordinance authorizes the closure of certain right-of-way as described therein upon the satisfaction of certain terms and conditions. Section 2(a) of the Ordinance requires the applicant or its successor in title to indemnify the City prior to the closure taking effect. The EDA has contracted to purchase the applicant's property adjacent to the right-of-way and intends to use such properties for a larger economic development project. The EDA lacks the legal authority to indemnify and the amendment is necessary so that, for the closure to take effect, the EDA is only required to indemnify the City to the extent it may do so under applicable law.

RECOMMENDATIONS: Approve the amendment so that the right-of-way may be closed.

BACKGROUND: The applicant requested the closure of the right-of-way described in the Ordinance as "a portion of right-of-way known as Lewis Street, located between its intersection with Williamsburg Road and its intersection with a CSX Transportation, Inc. right-of-way and consisting of 24,300± square feet and a portion of right-of-way known as 37th Street, located between its intersection with Lewis Street and its intersection with Nicholson Street and consisting of 5,985± square feet" in order to create a large tract on which to develop an economically beneficial project. City Council adopted the Ordinance on October 13, 2014, authorizing the closure of the right-of-way upon the satisfaction of certain terms and conditions, including the condition that the applicant or its successor in title agrees to indemnify the City. The EDA has contracted to purchase adjacent property and this amendment is necessary to enable the EDA to satisfy the conditions of the Ordinance.

FISCAL IMPACT/COST: None anticipated.

FISCAL IMPLICATIONS: None anticipated.

BUDGET AMENDMENT NECESSARY: No budget amendment necessary at this time.

REVENUE TO CITY: \$13,325.40

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: March 9, 2015

CITY COUNCIL PUBLIC HEARING DATE: March 23, 2015

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Land Use Housing and Transportation Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Public Works; Law Department; Planning and Community Development; Public Utilities; Economic Development; Assessor; Budget and Strategic Planning; Fire Department; Police Department, Mayor's Office, CAO's Office, Finance, City Attorney

RELATIONSHIP TO EXISTING ORD. OR RES.: Ordinance 2014-188-173

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS:

STAFF:

James Jackson, DCAO

Doug Mawby, Right of Way Engineer

Lee Downey, DCAO

Jane Ferrara, Deputy Director

Research and Drawing Coordinated By: Marvin Anderson and James Flannery

Department of Public Works

646-0435