

INTRODUCED: September 24, 2018

AN ORDINANCE No. 2018-260

To reopen to public use and travel a portion of Patton Avenue located between Mactavish Avenue and a point 472.20± feet east of Mactavish Avenue consisting of 24,545± square feet that was closed to public use and travel by Ord. No. 2010-192-182, adopted Oct. 25, 2010; to revoke a private use license for this same portion of Patton Avenue that was granted by Ord. No. 2010-193-183, adopted Oct. 25, 2010; to vacate a public utility and drainage easement located in a closed portion of Highpoint Avenue consisting of 15,765± square feet granted by Ord. No. 93-6-22, adopted Feb. 8, 1993; and to close, to public use and travel, a strip of public right of way along Patton Avenue, consisting of 4,095± square feet, but retaining a portion as a utility easement, consisting of 204± square feet; upon certain terms and conditions, and to authorize the Chief Administrative Officer to accept a dedication of access and utility easements along Patton Avenue, consisting of 20,907± square feet, in connection with the closing of such portion of Patton Avenue.

Patron – Mayor Stoney (By Request)

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: NOV 13 2018 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That a right-of-way area comprised of a portion of Patton Avenue located between Mactavish Avenue and a point approximately 472.20 feet east of Mactavish Avenue consisting of approximately 24,545 square feet closed by Ordinance No. 2010-192-182, adopted October 25, 2010, is hereby reopened to public use and travel as a right-of-way of the City of Richmond, as

AYES: 9 NOES: 0 ABSTAIN:

ADOPTED: NOV 13 2018 REJECTED: STRICKEN:

shown on a drawing prepared by the Department of Public Works, designated as DPW Drawing No. N-28254, dated February 17, 2009, and entitled “Proposed Closing of a Portion of Patton Avenue to Public Travel Only from Mactavish Avenue to a Point 251.13’ West of Summit Avenue,” a copy of which is attached to Ordinance No. 2010-192-182, adopted October 25, 2010.

§ 2. That the Encroachment/License Agreement between the City of Richmond, Thetford Properties Limited Partnership II, and Eastern Sleep Products, attached to and approved by Ordinance No. 2010-193-183, adopted October 25, 2010, for the purpose of granting Thetford Properties Limited Partnership II and Eastern Sleep Products Company to access the rear of their property and for the purpose of parking, as approved by Ordinance No. 2010-193-183, adopted October 25, 2010, is hereby revoked.

§ 3. That a public utility and drainage easement in a portion of Highpoint Avenue consisting of approximately 15,765 square feet, granted as right-of-way of the City of Richmond by Ordinance No. 93-6-22, adopted February 8, 1993, is hereby vacated.

§ 4. That a right-of-way area comprised of a strip of right-of-way along the southwestern side of Patton Avenue located between Mactavish Avenue and a point approximately 472.20 feet southeast of Mactavish Avenue consisting of approximately 4,095 square feet, as shown enclosed with bold lines on a drawing prepared by the Department of Public Works, designated as DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance, is hereby closed to public use and travel as right-of-way of the City of Richmond.

§ 5. That this ordinance, as to the closing of the right-of-way area identified in section 4 above, shall be in force as provided in section 4.09 of the Charter of the City of Richmond (2018), as amended, and shall become effective only when, within 12 months from the day this ordinance is adopted:

(a) The applicant obtains consent to the closing from each of the owners of land, buildings or structures from whom consent is required under section 24-314 of the Code of the City of Richmond (2015), 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.

(b) The applicant makes 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, including any such facilities as indicated in Note 10 on DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance, 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 applicant bears 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 agrees in writing with the City that, for itself, its successors, and its assigns, they shall 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 alleys, or any of them, on account thereof, they shall defend the City in any such suit or proceeding at their 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.

(d) The applicant applies for and receives approval for an encroachment pursuant to section 24-116(b)(1) of the Code of the City of Richmond (2015), as amended, for private underground pipe detention within the right-of-way of Patton Avenue.

(e) Private parking along the south right-of-way of Patton Avenue must be approved as provided for in section 3(b) of Ordinance No. 2015-228-222, adopted November 9, 2015.

(f) That the City shall retain utility easements within the right-of-way to be closed. The maximum extent of the easements is shown by the hatched area on DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance. The Director of Public Utilities may approve the retention of an easement over a smaller area than that shown on the Drawing if the Director determines that a smaller area will satisfy the requirements of the Department of Public Utilities. The Director of

Public Utilities may approve the vacation of the easement if the Director determines that the easement is no longer necessary to satisfy the requirements of the Department of Public Utilities. The retention of the easement and any vacation thereof shall be only by deed approved as to form by the City Attorney.

(g) The applicant dedicates or causes the dedication of a variable-width pedestrian access and parking easement consisting of approximately 2,676 square feet along the eastern side of Mactavish Avenue as shown bounded between the bolded southeast right-of-way line of Mactavish Avenue and a short dashed line on DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance.

(h) The applicant dedicates or causes the dedication of an access easement for public travel consisting of approximately 7,196 square feet connecting Patton Avenue to the 20 foot public alley south of Patton Avenue as shown by the cross-hatched area on DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance.

(i) The applicant dedicates or causes the dedication of a variable-width pedestrian access and parking easement consisting of approximately 2,676 square feet along the eastern side of Mactavish Avenue as shown bounded between the bolded southeast right-of-way line of Mactavish Avenue and a short dashed line on DPW Drawing No. N-28837, dated April 16, 2018,

and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance.

(j) The applicant dedicates or causes the dedication of a waterline easement consisting of approximately 11,034 square feet as shown by heavy dashed lines on DPW Drawing No. N-28837, dated April 16, 2018, and entitled “Proposed Closing to Public Use and Travel of a Strip of R/W along Southwestern Side of Patton Avenue from Mactavish Ave. to a Point 472.20 ' +/- SE of Mactavish Ave.; and the Conveyance, Retainage, or Abandonment of Various Easements,” a copy of which is attached to this ordinance.

(k) The applicant satisfies all terms and conditions requisite for the closing of the right-of-way area to be closed by this ordinance and provides 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.

§ 6. That the Chief Administrative Officer, for and on behalf of the City of Richmond, is hereby authorized to accept the dedications described in subsections (g) through (j) of section 5 of this ordinance.

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

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



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: August 23, 2018

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney (By Request)

JS 9/13/18
SLD

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Robert Steidel, Deputy Chief Administrative Officer - Operations

RECEIVED

THROUGH: Bobby Vincent, Director
Department of Public Works

BV

SEP 18 2018

THROUGH: M.S. Khara, P.E., City Engineer
Department of Public Works

M.S. Khara

OFFICE OF CITY ATTORNEY

THROUGH: Brian Copple, Right of Way Manager
Department of Public Works

BC

FROM: Doug Mawby, Acting Operations Manager
Department of Public Works

DM

RE: PROPOSED REOPENING TO PUBLIC USE AND TRAVEL OF A CLOSED PORTION OF PATTON AVENUE; RESCINDING OF A LICENSE AGREEMENT; CLOSING TO PUBLIC USE AND TRAVEL OF A STRIP OF R/W ALONG SOUTHWESTERN SIDE OF PATTON AVENUE FROM MACTAVISH AVE. TO A POINT 472.20' ± SE OF MACTAVISH AVE.; AND THE ACCEPTANCE OF EASEMENT DEDICATIONS.

ORD. OR RES No. _____

PURPOSE: To reopen to public use and travel the portion of Patton Ave. between MacTavish Ave and approximately 472.20 ft. east of MacTavish Ave. that was previously closed to public use and travel by Ordinance #2010-192-182; to revoke a private use license for this same portion of Patton Ave.; to vacate a public utility and drainage easement that exists in a previously closed portion of Highpoint Ave. via Ordinance #93-6-22 (15,765 sq. ft.); and to close to public use and travel a strip of public right of way along Patton Ave.(4,095 sq. ft.) but retaining a portion as a utility easement (204 sq. ft.) and authorize the Chief Administrative Officer to accept access and utility easements (20,907 sq. ft.) as shown on a plat prepared by the Department of Public Works designated as DPW

Dwg. No. N-28837 dated April 16, 2018 entitled "PROPOSED CLOSING TO PUBLIC USE AND TRAVEL OF A STRIP OF R/W ALONG SOUTHWESTERN SIDE OF PATTON AVENUE FROM MACTAVISH AVE. TO A POINT 472.20' ± SE OF MACTAVISH AVE.; AND THE CONVEYANCE, RETAINAGE, OR ABANDONMENT OF VARIOUS EASEMENTS" at the request of the applicant.

REASON: Letter of request dated August 28, 2017 and as amended March 27, 2018 from T. Preston Lloyd, Williams Mullen, on behalf of the Owner, Symbol Development LLC.

RECOMMENDATIONS: The Department of Public Works offers no objections to the proposed right-of-way closing and request that any approvals be subject to, and including without limitation, the following terms and conditions:

1. The applicant(s)/owner(s)/successor(s) shall be responsible for any and all costs associated with the proposed closing, including without limitation, realignment, relocation, or removal of utilities, or infrastructures, installment of new utilities or infrastructures, new or revised street name or directional signs, streetlights, etc., as required or directed by City Agencies.
2. The applicant(s)/owner(s)/successor(s) shall provide evidence that they have identified any public or private utilities that may have a vested interest in or facilities located within the subject right of way and worked out arrangements with the owners of any such utilities to protect the owner's rights that includes such facilities as indicated on Note 10 on DPW Dwg. N-28837.
3. The applicant(s)/owner(s)/successor(s) shall be responsible for surface storm water overflow in the area to be closed.
4. An Administrative Encroachment application for private underground pipe detention within Patton Avenue right of way be submitted and approved.
5. Private parking along the south right-of-way of Patton Avenue must be per approved SUP Ordinance 2015-228-222.
6. The applicant(s)/owner(s)/successor(s) shall be responsible for obtaining the written consent of all abutting landowners to the closing.
7. The applicant shall dedicate a variable width Pedestrian Access and Parking Easement along the eastern side of MacTavish Ave as shown on the attached DPW Drawing N-28837.
8. The applicant shall dedicate an Access Easement for Public Travel which will connect Patton Ave to the 20' public alley to the south of Patton Ave as shown on the attached DPW Drawing N-28837.
9. The applicant shall dedicate a waterline easement to run along the north and east sides of the project as shown on the attached DPW Drawing N-28837.
10. The applicant(s)/owner(s)/successor(s) is responsible for providing the Law Department with written evidence within twelve (12) months of the ordinance adoption that all conditions of the ordinance have been satisfied. Should this written evidence not be submitted to the said offices prior to the expiration date after final approval of the ordinance, the ordinance will become null and void automatically.

BACKGROUND:

Ordinance 2010-192-182, City Council previously closed right-of-way (approximately 24,545 square feet) to public use and travel a portion of Patton Avenue from MacTavish Avenue to a point east of previously vacated Highpoint Avenue. Companion paper 2010-193-183 authorized a private

use license for the closed portion of Patton Ave. The current owner of the property adjacent to this portion of Patton Ave is requesting that both of these actions be reversed.

Special Use Permit (SUP) Ordinance 2015-288-222 granted special use of the property at 1821 MacTavish as a mixed-use development subject to certain terms and conditions. To complete this project, the developer needed to obtain right of way from the City and to dedicate various easements to the City both to accommodate public right of way use and for public utilities that serve the project.

The utility easement being vacated is no longer needed as new utility lines have been constructed in other locations.

It is customary for someone asking the City to vacate public right of way to pay for said right of way. The value of the right of way to be vacated was set at \$13.82 per square foot based on an average of the assessed value of the abutting properties. In this case, the value of easements dedicated to the City by the applicant for public use and travel and for public utilities is greater than the value of right of way and easements being vacated by the City. Therefore no payment is recommended to the City.

1. Portion of right-of-way for Patton Avenue to be closed to public use and travel: 4,095 sq. ft.
2. Portion of aforesaid right-of-way to be retained as a public utility easement: 204 sq. ft.
3. Area to be dedicated to City as a variable width pedestrian access and parking easement along MacTavish Avenue: 2,676 sq. ft.
4. Area to be dedicated to City as an access easement for public travel: 7,196 sq. ft.
5. Area to be dedicated to City as a waterline easement: 11,035 sq. ft.
6. Variable Width Drainage and Utility Easement within previously closed portion of Highpoint Avenue is to be vacated. This is shown on drawing N-28837. Previous Ordinance #93-6-22 with Drawing N-22407 created this easement. Area of drainage and utility easement is 15,765 sq. ft.

Other reviewing administrative agencies offered no objections to the closing request.

FISCAL IMPACT/COST: None

FISCAL IMPLICATIONS: None anticipated.

BUDGET AMENDMENT NECESSARY: No amendment necessary at this time.

REVENUE TO CITY: \$300 application fee.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: September 24, 2018

CITY COUNCIL PUBLIC HEARING DATE: November 13, 2018

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: None

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

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

RELATIONSHIP TO EXISTING ORD. OR RES.: SUP Ordinance 2015-228-222

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Applicant's request letter
DPW Dwg. No. N-28837

STAFF:

Prepared for Bobby Vincent, Director DPW
Prepared by Brian Copple – RW Manager – DPW
Research and Drawing Coordinated By: James Flannery
Department of Public Works
646-0435

WILLIAMS MULLEN

Direct Dial: 804.420.6615
plloyd@williamsmullen.com

August 28, 2017
As Amended March 27, 2018

VIA EMAIL

Bobby Vincent, Jr., Director
City of Richmond Department of Public Works
900 E. Broad Street, #700
Richmond, Virginia 23219
Email: brian.copple@richmond.gov

Re. Symbol Development LLC | Abandonment of Portion of Patton Avenue

Ladies and Gentlemen:

This firm is counsel to Symbol Development LLC (the "Owner"), which owns that certain property having an address of 1821 MacTavish Ave in the City of Richmond (the "Property"), located immediately adjacent to Patton Avenue. By this letter, we request that City Council act as follows: (i) re-open a certain portion of Patton Avenue to public travel and (ii) vacate other portions of the former Patton Avenue.

Background

By Ordinance 2010-192-182, City Council acted to close as a right-of-way no longer needed for public travel that portion of Patton Avenue from MacTavish Avenue to a point east of Highpoint Avenue containing approximately 24,545 square feet (the "Right of Way"), designated as "PATTON AVE. - VARIABLE WIDTH R/W, PER BASELINE SHEET #17-N.E. FOR CITY OF RICHMOND (SEE NOTE 7)" on that certain plat entitled "*PLAT SHOWING THE VACATION OF A PORTION OF PATTON AVENUE & THE DEDICATION OF VARIOUS EASEMENTS ACROSS TWO PARCELS IN SCOTTS ADDITION*," prepared by AES Consulting Engineers, dated *February 2, 2018* (the "Plat"). The City retained legal title to the Right of Way and thus any changes to the Right of Way require City action.

By Ordinance 2015-288-222 (the "SUP"), City Council authorized the special use of the Property for the purpose of a mixed-use development but subject to certain terms and conditions, including the following related to the Right of Way:

- A. As a condition of issuance by the City of a Certificate of Occupancy for the apartment buildings shown on the plans approved in connection with the SUP, the owner of the Property must first cause the Right of Way to be re-opened to public travel by City Council.
- B. As a condition of the City entering into any easement, license or other approval that would allow the owner of the Property to use any portion of the Right of Way, the Owner must first (i) provide public access from the Right of Way to the intersection of Highpoint Avenue and a 20-foot alley connecting Highpoint Avenue and Summit Avenue, as shown on the approved SUP plans, and (ii) grant a permanent public easement for access in the location shown on the approved SUP plans.

Applicant's Report

Request 1: Reopening of Patton Avenue to Public Travel; Revocation of License Agreement

At the time of negotiating the conditions of SUP approval, City staff from the Department of Public Works and the Department of Planning and Development Review communicated to the Owner the goal of re-opening to public travel a ring road at the rear of the Scott's Addition neighborhood to facilitate improved circulation. To achieve this goal and to satisfy the conditions of the SUP, we request that the City reopen the Right of Way to public travel *and simultaneously revoke and terminate any License Agreement(s) authorizing the use of the Right of Way to the extent previously granted by the City in favor of the Owner or its predecessor in title.*

Request 2: Vacate the Encroaching Area

We further request the City vacate and abandon that portion of the former Patton Avenue designated as "New Area 4,159 S.F./0.095 AC." on the Plat (the "Encroaching Area"). The Encroaching Area is small but at its largest width, it encroaches upon several parking spaces that will service the approved mixed-use development. At the northeast point of the Property, connected to MacTavish Avenue, the Encroaching Area is approximately 10 feet wide and then it slims to only 1.44 feet at the other end of the Property. City staff has confirmed through communications with the Owner that because of the small size of the Encroaching Area, it is not necessary for an effective and efficient Right of Way. Thus, no adverse impact will result from the vacation of the Encroaching Area. There also may be a benefit to the City of vacating the Encroaching Area.

Per Section III(a) of the City Guidelines for Initiating a Right-of-Way Closing/Vacation, the "administration will typically *not* recommend a closing that creates a jog or unevenness within the consistency of a right-of-way line or boundary pattern." As stated above, the Encroaching Area is approximately 10 feet wide at one end of the Property and 1.44 feet wide at the other end. By vacating the Encroaching Area, the new property line (designated as "New Property Line" on the Plat) and the Right of Way will both have straight consistencies. The goal of having straight boundary patterns and rights-of-way would not be accomplished on the Property or Right of Way if the Encroaching Area is not vacated.

Request 3: Dedication of Pedestrian Easement and Access Easement

We further request that upon dedication by the Owner to the public of a pedestrian access & parking easement along MacTavish Ave. over a portion of the Owner's property shown and labeled on the Plat as "VARIABLE WIDTH PEDESTRIAN ACCESS & PARKING EASEMENT 2,676 SQ.FT.; 0.061 AC." (the "Pedestrian Easement"), pursuant to an instrument in a form acceptable to the City Attorney, that such Pedestrian Easement be accepted by the City.

We further request that upon dedication by the Owner to the public of an ingress/egress and access easement continuing Highpoint Ave. over a portion of the Owner's property shown and labeled on the Plat as "VARIABLE WIDTH INGRESS/EGRESS ACCESS EASEMENT 1,026 SQ.FT.; 0.024 AC." (the "Access Easement"), pursuant to an instrument in a form acceptable to the City Attorney, that such Access Easement be accepted by the City.

Request 4: Vacation of Drainage & Utility Easement

We further request the vacation and abandonment by the City of a drainage and utility easement presently burdening the Owner's Property, as created by Ordinance No. 93-6-22, as previously recommended for approval by representatives of the City's the Department of Public Utilities. This easement is shown and labeled on the Plat as "EXISTING VARIABLE WIDTH DRAINAGE AND UTILITY EASEMENT, SEE ORDINANCE #93-6-22, ADOPTED 2-08-93, ACCEPTED 2-09-94 FOR CLOSING OF A PORTION OF HIGHPOINT AVE." (the "Drainage & Utility Easement").

Request 5: Vacation of Water Line Easement

We further request the vacation and abandonment by the City of a water line easement presently burdening the Owner's Property in the location shown and labeled on the Plat as "CENTER LINE 16' WATER LINE EASEMENT."

Condition Precedent to Effectiveness of City's Approval

The Owner acknowledges and agrees that the effectiveness of City's approval of each of the foregoing matters requested by this Applicant's Report shall be expressly conditioned upon the approval by the City of a permit authorizing an encroachment for the private underground pipe detention benefitting the Owner and presently located within the Right of Way.

Conclusion & Summary Request

In summary, by this letter we ask that appropriate ordinances be prepared for City Council consistent with each of the foregoing requests.

Thank you for your assistance with this matter. Should you require any further documentation in connection with this request, please contact the undersigned.

Very truly yours,



T. Preston Lloyd, Jr.

- cc. Andrew A. Gore, Esq., Assistant City Attorney (via email)
- Brian Copple, Department of Public Works (via email)
- Marvin W. Anderson, Department of Public Works (via email)
- James Flannery, Department of Public Works (via email)
- Andrew Basham, Spy Rock Real Estate Group (via email)