

ORDINANCE NO. 23-240

AN ORDINANCE AMENDING ORDINANCE NO. 21-082, PASSED ON JUNE 14, 2021; AUTHORIZING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH SCOTT AND DAWN GALLAGHER, TO PROVIDE FOR THE USE OF A CERTAIN PORTION OF THE CITY'S RIGHT-OF-WAY, AS DESCRIBED IN THE GRANT OF A LICENSE FOR ENCROACHMENT, FOR PURPOSES OF RETAINING AN EXISTING BRICK PLANTER AND BUILDING; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, certain property of the City is currently platted as City right-of-way including the property identified and more fully described in Exhibit "A"; and

WHEREAS, during the design phase of the Warren Street Reconstruction Project, the consulting firm, LJB, Inc., discovered eight (8) properties along the project limits were encroaching onto City right-of-way without a License Agreement in place; and

WHEREAS, the City Commission approved License Agreements for all eight (8) properties by Ordinance Nos. 21-080 through 21-087, passed on June 14, 2021, and subsequently, all of the agreements were fully executed and recorded except for the license for the property located at 426 Warren Street; and

WHEREAS, since this time, the property at 426 Warren Street was sold and is currently owned by Scott & Dawn Gallagher who desire to enter into a License Agreement with the City for their property to retain and maintain an existing brick planter and building within the City's right-of-way located on the east side of Warren Street and south side of Adams Street; and

WHEREAS, this City Commission, under powers of Local self-government granted to the City by Article XVIII of the Ohio Constitution and Section 3 and Section 25 of the Charter of the City of Sandusky, has the power to change the use of City property to a use that would be of greater benefit and use to the public; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to allow the Grant of a License for Encroachment to be fully executed and recorded as the Warren Street Reconstruction Project is currently under construction; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

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Section 1. This City Commission hereby amends Ordinance No. 21-082, passed on June 14, 2021.

Section 2. The City Manager is authorized and directed to enter into the Grant of a License for Encroachment Agreement with **Scott and Dawn Gallagher**, substantially in the same form as contained in Exhibit "1", which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the City's public purpose as set forth in the preamble hereto.

Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: December 11, 2023

**GRANT OF A LICENSE FOR ENCROACHMENT ON THE EAST SIDE OF WARREN
STREET, SOUTH SIDE OF ADAMS STREET
(426 Warren Street)**

This License Agreement is made this day _____ of _____, 2023, between the City of Sandusky, Ohio ("City") whose tax mailing address is 240 Columbus Avenue, Sandusky, Erie County, Ohio, 44870, and Scott Gallagher and Dawn Gallagher, ("Licensee") whose tax mailing address is 426 Warren Street, Sandusky, Ohio 44870, under the following conditions and circumstances:

Whereas, the City of Sandusky, Erie County, Ohio, is the Owner and Trustee for the general public of the rights-of-way as defined in the Ohio Revised Code, Section 4511.01(uu), including Warren Street and is more fully described in Exhibit "A" which is attached to this License Agreement and is specifically incorporated as if fully rewritten herein.

Whereas, the Licensee is the owner in fee simple of the real estate adjoining the east side of the Warren Street right-of-way located at 426 Warren Street., Sandusky, OH 44870.

Whereas, the Licensee desires to retain and maintain the exterior brick planter and building (the "Encroachment"), within the City's rights-of-way, located at 426 Warren Street, Sandusky, Ohio, and as more fully described in Exhibits "A" and "B" which is attached to this License Agreement and is specifically incorporated as if fully rewritten herein.

Whereas, the City is willing to grant to Licensee a temporary license to maintain the Encroachment so long as the Encroachment is not substantially altered.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES
AGREE AS FOLLOWS:**

1. The City grants to Licensee the license and permission to retain and maintain the Encroachment as more fully described in Exhibits "A" and "B" which are attached to this License Agreement and are specifically incorporated as if fully rewritten herein, for the real property located at 426 Warren Street, Sandusky, OH 44870, provided that the Encroachment is not substantially altered, that the Licensee complies with all legal requirements, and Licensee acknowledges that this grant of a license is terminable at the will of the City;
2. Licensee agrees that, except for the license granted pursuant to this Agreement, Licensee makes no claim of right and has no interest or title in any part of the property and Licensee further agrees that the maintenance of the Encroachment shall not, at any time, be deemed or construed to be an adverse possession of any part of the City's right-of-way;
3. Licensee agrees to maintain the Encroachment and further agrees to indemnify and hold harmless the City of Sandusky (it's officials, employees, boards, commissions and agents) from any and all loss, damage, expense, or liability arising from the maintenance of the Encroachment;
4. This Agreement shall run with the land but is only a temporary license, terminable at the will of the City.

SIGNATURE PAGES TO FOLLOW

My Commission Expires: _____

SIGNED AND ACKNOWLEDGED CITY SANDUSKY:

John Orzech, CITY MANAGER

State of Ohio)

) ss:

County of Erie)

Before me a Notary Public for the State of Ohio, appeared the above named, John Orzech, City Manager of the City of Sandusky, who acknowledged that he signed the foregoing instrument and that the signing was a free act.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my seal
this ____ day of _____, 2023.

Notary Public: _____

My Commission Expires: _____

Instrument prepared by:

Sarah S. Chiappone #0101179
Assistant Law Director
City of Sandusky

**LEGAL DESCRIPTION
ENCROACHMENT LICENSE AGREEMENT (ELA)
FOR A PORTION OF A BRICK PLANTER AND BUILDING
426 WARREN STREET
16 SQ. FT.**

Situated in the City of Sandusky, County of Erie, State of Ohio and being part of parcel 56-00864.000 currently owned by Kevin Dickens by record number 201909321 of Erie County Records (ECR) and further described bounded as follows:

Commencing at the intersection of the centerlines of East Adams Street and Warren Street (66 feet wide); THENCE; S 23° 40'03" E, along said Warren Street centerline, a distance of 308.44 feet to a point on same; THENCE; N 66° 19'57" E, leaving said centerline, a distance of 33.00 feet to a point on the easterly right of way of Warren Street and being the principal place of beginning of the ELA herein described;

Thence S 23° 40'03" E, along said right of way, a distance of 27.94 feet to a point on the on same;

Thence S 64° 04'24" W, leaving said right of way, a distance of 1.24 feet to a point;

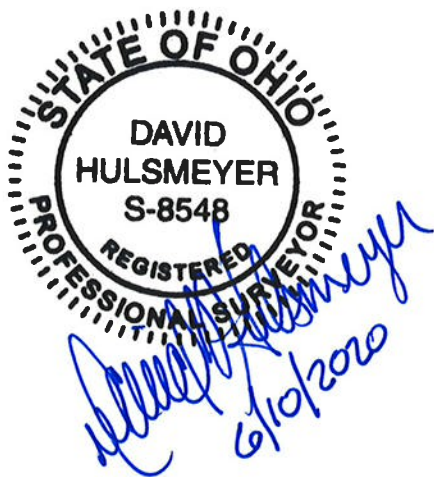
Thence N 23° 32'07" W, a distance of 11.77 feet to a point;

Thence N 68° 03'41" E, a distance of 1.04 feet to a point;

Thence N 23° 03'26" W, a distance of 16.24 feet to the principal place of beginning.

Containing 16 square feet, more or less, and being subject to all legal highways and easements of record.

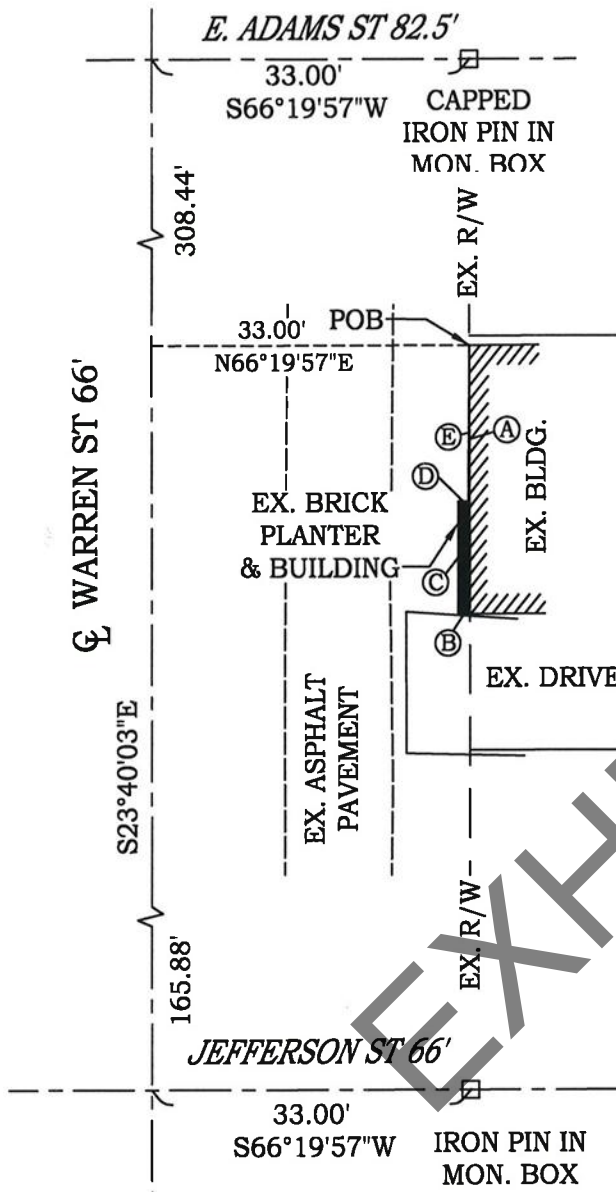
Bearings cited within the above description are to an assumed meridian and indicate angles only. The intent is to describe an encroachment license agreement area encompassing a portion of an existing brick planter and building. This description was prepared by David Hulsmeyer P.S. No. 8548 from a survey by LJB, Inc. conducted in April 2020.



ENCROACHMENT LICENSE AGREEMENT

426 WARREN STREET

EAST SIDE OF WARREN STREET, SOUTH SIDE OF ADAMS
STREET, CITY OF SANDUSKY, ERIE COUNTY, OHIO



GRAPHIC SCALE



(IN FEET)

1 inch = 20 ft.

A	S23°40'03\"E	27.94'
B	S64°04'24\"W	1.24'
C	N23°32'07\"W	11.77'
D	N68°03'41\"E	1.04'
E	N23°03'26\"W	16.24'

ENCROACHMENT
LICENSE AREA
16 SQ. FT.



CERTIFICATION

I HEREBY CERTIFY THAT THIS AGREEMENT IS BASED ON A SURVEY
CONDUCTED BY LJB, INC. IN APRIL 2020. BEARINGS USED HEREIN
ARE BASED ON AN ASSUMED MERIDIAN AND INDICATE ANGLES
ONLY. DISTANCES ARE MEASURED IN FEET AND DECIMAL PARTS
THEREOF.

David Hulsmeyer
DAVID HULSMEYER, P.S. DATE 6/10/2020
OHIO LICENSED PROFESSIONAL SURVEY NO. 8548



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