



Legislation Text

File #: O-365-23, **Version:** 1

The Clerk Reports

Amending Ordinance 315-20 which declared the vacation of that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio by removing the retention of the Utility Easement; and declaring an emergency.

SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 447-19 adopted on September 17, 2019, declaring its intent to vacate that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio. On February 13, 2020, the Toledo City Plan Commission recommended approval of the request for the vacation of that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio. On May 13, 2020, City Council Zoning and Planning Committee sent without recommendation the request for the vacation of a vacation of that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio. The Board of Revision met on July 8, 2020 and recommended to Council approval of the request for the vacation of a vacation of that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio

A request has been made by the applicant that Ordinance 315-20 be amended to remove Section 4, the utility easement retention, in order to allow the utilities to be relocated and allow for construction to occur as approved in PUD-8007-19 and S-21-21.

All of the preliminary steps have been taken as required by law, the Charter of the City of Toledo, and the Toledo Plan Commission has made reports regarding the proposed vacations; and all things required by law to be done, have been done.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That pursuant to Ordinance 315-20 the Council of the City of Toledo vacated that 50-foot strip adjacent to Lots 108-109 & 157-158 in the Plat of Kingston, AKA Rathbun Drive Street, in the City of Toledo, Lucas County, Ohio. in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

SECTION 2. That Section 4 of Ordinance 315-20, which reads as follows:

SECTION 4. That a full width easement in favor of the City is retained across, under and through said vacated area as described in Section 1 herein for the City's future maintenance, repair, and replacement of the existing sewer, water and/or storm water facilities located in the vacated area. All City facilities located within said vacated area are hereby dedicated to the City for exclusive City utility use only and shall not be combined with easements or rights for other utilities. The easement retained by the City shall be primary to any other

utilities located therein, and any easement retained by any other utility shall be subordinate to and subject to the easement rights of the City of Toledo. Said easement shall be permanent in nature for each utility and shall run with the land. Said easement also includes reasonable rights of egress and ingress over and through the vacated area. No fence, wall, building foundation, roof overhang, or other barrier which would impede access to the easement shall be constructed or maintained. Driveways, parking lots, walkways and other similar improvements are permitted subject to the prior written consent of the City. The City shall be released and held harmless for any liability, responsibility costs, or damages resulting from the City's removal of any barriers which impede the City ingress or egress from the easement or which obstruct access to the utilities located within the vacated area. The City shall have no obligation or duty to restore or compensate the barrier owner for any barrier removed in whole or in part by the City. Any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance shall be obtained separately from each utility, as to their interest(s) only, by separate recordable instrument.

Is repealed.

SECTION 3. That a new Section 4 of Ordinance 315-20 is enacted to read as follows:

“SECTION 3: That the Owner of the vacated alley property, as described in Section 1, shall be responsible for the relocation of any utility facilities or equipment, whether owned by a public or private utility within the vacated alley or preserving access to such utility facilities. Utility facilities include conduits, cables, wires, towers, poles, sewer line, pipelines, gas and water lines, or other equipment of any railroad or public utility, located on, over or under the portion of the vacated alley property. Any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance and operation of Ohio law shall be obtained separately from each utility, as to their interest(s) only. The City shall be released and held harmless for any liability, responsibility costs, or damages resulting from Owners construction in the vacated alley property, which interferes with any utility easement retained as a matter of law in accord with Section 723.041 of the Ohio Revised Code.”

SECTION 4. That other than as amended herein, all provisions of Ordinance 315-20 shall remain in full force and effect.

SECTION 5. That the Real Estate Section of the Department of Economic Development is hereby directed to cause a copy of this Ordinance to be recorded in the records of the office of Lucas County Recorder.

SECTION 6. That it is hereby found and determined that all formal actions of Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council, and that all deliberations of Council and any of its committees that result in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 7. That this Ordinance is hereby declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and for the further reason that this Ordinance must be immediately effective so that the vacations can be expeditiously completed to enable the property owner(s) to obtain the resulting benefits at the earliest time.

Vote on emergency clause: yeas 10, nays 0.

Passed: June 27, 2023, as an emergency measure: yeas 10, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

June 27, 2023
Wade Kapszukiewicz
Mayor