



Legislation Text

File #: O-449-21, **Version:** 1

Zoning & Planning Committee

Declaring the vacation of a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio, waiving all fees; and declaring an emergency.

SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 199-21 adopted on April 13, 2021, declaring its intent to vacate a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio; as more fully described in Section 1 hereof.

On June 10, 2021, the Toledo City Plan Commission recommended approval of the request for the vacation of a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio.

The City Council Zoning and Planning Committee on July 14, 2021, sent as approved the request for the vacation of a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio.

The Board of Revision met on August 3, 2021 and approved the request for the vacation of a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio.

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. During the vacation process it was determined the City of Toledo has waived all fees for this vacation.

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

SECTION 1. That the Council of the City of Toledo does hereby vacate a portion of Constitution Avenue between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio:
Constitution Avenue Vacation - 0.449 acres

A parcel of land being that part of Constitution Avenue (right of way varies) located in Vistula Subdivision (Plat Volume 7, Page 19-20) and being between Erie Street and Spielbusch Avenue, in the City of Toledo, Lucas County, Ohio and being further bounded and described as follows:

Commencing from a stone in a monument box found marking the intersection of the centerline of Michigan Street (66' right of way) (Vacated) with the centerline of Cherry Street (right of way varies);

Thence Southwesterly along the centerline of said vacated Michigan Street, South 58 degrees 17 minutes 55 seconds West, a distance of 438.45 feet to the intersection of the Easterly right of way line of Constitution

Avenue (right of way varies);

Thence Southeasterly along the Easterly right of way line of said Constitution Avenue, South 31 degrees 37 minutes 27 seconds East, a distance of 112.82 feet to an iron pin set and the **True** Point of Beginning of the Parcel herein described;

1. Thence continuing Southeasterly along the Easterly right of way line of said Constitution Avenue, South 31 degrees 37 minutes 27 seconds East, a distance of 296.54 feet to a mag nail set;
2. Thence Southwesterly along a line perpendicular to the Easterly right of way line of said Constitution Avenue, South 58 degrees 22 minutes 33 seconds West, a distance of 66.00 feet to an iron pin set on the Westerly right of way line of said Constitution Avenue;
3. Thence Northwesterly along the Westerly right of way line of said Constitution Avenue, North 31 degrees 37 minutes 27 seconds West, a distance of 147.85 feet to a point of curvature (referenced by a 5/8-inch iron pin found 0.1' North);
4. Thence Northwesterly along the Westerly right of way line of said Constitution Avenue being a curve to the left, said curve having a Radius of 265.00 feet, a Delta of 24 degrees 11 minutes 26 seconds, a Chord Bearing of North 43 degrees 43 minutes 10 seconds West, a Chord Length of 111.06 feet, a distance of 111.88 feet to an iron pin set;
5. Thence Northeasterly along a line, North 34 degrees 11 minutes 06 seconds East, a distance of 97.86 feet to the True Point of Beginning, containing in all 0.449 acres of land more or less, subject however to all legal highways and prior easements of record.

The above legal description is based on a land survey performed during February of 2021, by DGL Consulting Engineers, LLC. and was prepared by Ronald J. Lumbrezer, Ohio Professional Surveyor #8029.

SECTION 2. That the vacation(s) herein shall be subject to compliance of the following condition(s):

The following seven (7) conditions are listed by agency of origin. Applicants are encouraged to contact each of the agencies to address compliance with their conditions.

Division of Engineering Services.

1. O.R.C. 5553.043 Railroad or public utility company deemed to have permanent easement in vacated portion of road. When any street, highway, or road, or a portion of any street, highway, or road, is vacated pursuant to any section of this chapter or Chapter 5571. of the Revised Code, and the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any electric cooperative, railroad, or public utility, whether owned privately or by any governmental authority, located on, over, or under the portion of the street, highway, or road affected by the vacation, are not required for purposes of the vacating authority, any affected electric cooperative, railroad, or public utility company shall be deemed to have a permanent easement in the vacated portion of the street, highway, or road for the purpose of accessing, maintaining,

operating, renewing, reconstructing, and removing those utility facilities. The permanent easement also confers a right of ingress and egress to service and maintain those utility facilities and a right to trim or remove any trees, shrubs, brush, or other obstacles growing in or encroaching onto the permanent easement that may affect the operation, use, or access to those utility facilities. Nothing in this section shall be construed to relieve an owner of the right to mine coal who petitions for a proposed improvement from the obligation to pay the relocation costs and expenses of public utility or electric cooperative facilities as provided in this chapter or Chapter 5571 of the Revised Code. As used in this section, "electric cooperative" has the same meaning as in section 4928.01 of the Revised Code. Effective Date: 10-16-1961; 06-10-2004. No permanent improvements shall be built on the vacated property.
Division of Engineering Services

2. A pre-submittal meeting is not required; however, one may be requested.

3. That a full width (variable width) easement is hereby retained over, across, under and through said vacated area as described in Section 1 herein, for the existing water main, sanitary sewer and storm sewer located in said vacated right of way. All City of Toledo facilities located within said easement are hereby dedicated to the City of Toledo, for City utility use only, to allow for future maintenance, repairs, replacements, etc. and shall not be combined with easements for other utilities. The easement hereby retained by the City of Toledo herein shall be primary in nature to any other utilities located therein, and any easement retained by any other utility as a result of this Ordinance shall be subject first to the easement rights of the City of Toledo. Said easement herein shall be permanent in nature for each utility currently located thereon and shall run with the land. Said easement also includes reasonable rights of ingress and egress over and through the utility easement area for the purpose of operating, maintaining, replacing, repairing and/or constructing any utilities located within the easement. The property owner shall not construct fences, walls or other barriers, which would impede access onto the easement. No temporary or permanent structures including building foundations, roof overhangs or other barriers denying access, may be constructed on or within the easement. Driveways, parking lots, walkways and other similar improvements are acceptable. The property owner hereby releases the City of Toledo, only, from any liability, responsibility or costs resulting from the City's removal of any barriers which deny ingress or egress from the easement or which obstruct access to the public utilities located on said property, and the City of Toledo shall have no obligation or duty to restore or compensate the property owner for the removed facilities. Further, any modification and/or release of any easement granted or retained by any utility as a result of this Ordinance shall be obtained by the owner separately from each utility, as to their interest(s) only, by separate, recordable instrument. The water main shall be located by survey and a twenty-foot (20') easement centered on the water main will be acceptable. Additional easement width at hydrants will be required such that each hydrant, hydrant valve and hydrant branch are centered in a twenty-foot (20') easement.

4. No structures prohibiting access shall be built within the 20' easement.

5. Buckeye approves the vacation with the condition that the developer/owner will

provide continual access to Buckeye's existing facilities & that the developer/owner will provide Buckeye a 10' easement at those locations.

Fire Prevention

6. The public fire hydrant, serving as the nearest water supply, located near the SW corner of the proposed vacation, needs to remain for protection of the large parking area between the Lucas County Health Dept. and the District Court House. Access to hydrants surrounding the site will be maintained and coordinated with the Fire Prevention Bureau.

Division of Transportation

7. No dead-end roads shall be created as part of the partial vacation of Constitution Ave. and future US Courthouse expansion project. A turnaround at the southerly end of the vacated area is required.

SECTION 3. That the Real Estate Section of the Department of 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 4. 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 5. 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 12, nays 0.

Passed: August 17, 2021, as an emergency measure: yeas 12, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

August 17, 2021
Wade Kapszukiewicz
Mayor