



Legislation Text

File #: O-186-24, **Version:** 1

Vacation with Utility Easement Retention Water/Olive/Elm Streets

Declaring the vacation of all of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, in Toledo, Lucas County Ohio; and declaring an emergency.

SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 604-23 adopted on November 8, 2023, declaring its intent to vacate all of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, is intended to support future development of the Glass City Riverwalk into the Lower Town / Vistula neighborhood. Future development of this area shall be subject to Maumee Riverfront Overlay District review guidelines, Summit Street Corridor Redevelopment Urban Neighborhood Overlay District review guidelines, and Special Use Permit review.

A large city detention basin is located directly adjacent to Olive Street on the parcel to the north east. Due to the importance of this detention basin the area must be kept clear for continuing maintenance. The intention of this vacation is to support future development of the Glass City Riverwalk. The Glass City Riverwalk is imagined to create new and revitalized riverfront greenspace connected by multi-use trails. With this intention in mind, Staff believes an easement following the current right-of-way will suffice in ensuring a clear area is maintained. This easement shall gain the approval of the Commissioner of Engineering Services as a condition of approval.

Summit Street Redevelopment Plan

The Summit Street Redevelopment Plan is a plan adopted by city council intended to recommend community and economic development initiatives to reverse urban and economic decline, link existing residential neighborhoods with the Maumee River, and devise market driven revitalization programs. The plan designates sites surrounding the requested vacation as “flexible” for future land uses and notes the importance of this area in connecting the northern neighborhood to the water. The proposed vacation conforms with the Summit Street Redevelopment Plan as the vacation of these streets will support future development of the Glass City Riverwalk into the Lower Town / Vistula neighborhood, connecting the neighborhood to the water.

Vistula Neighborhood Master Plan

The Vistula Neighborhood Master Plan, intended to guide development of the Vistula Neighborhood, designates the area along Summit Street and parallel to the river as Lower Town. Lower Town is intended to be a unique extension of the Core Business District, creating a diverse link between historic Vistula and new Downtown investment. Sites surrounding the proposed vacation are targeted for Parks and Open Space land use. The proposed vacation conforms with the Vistula Neighborhood Master Plan as the vacation of these streets will support future development of the Glass City Riverwalk into the Lower Town / Vistula neighborhood.

Toledo 20/20 Comprehensive Plan

The Toledo 20/20 Comprehensive Plan targets this area for Urban Village land use. The Urban Village land use is a specialized residential and commercial district that possesses characteristics of traditional neighborhood development, such as pedestrian orientation, zero building setbacks, mixed uses, and distinct architectural character. Public parks increase quality of life for nearby residents and are shown to be a valued amenity within neighborhoods. The proposed vacation is in character with traditional neighborhood development and is suitable within the Urban Village land use.

On January 11, 2024, the Toledo City Plan Commission recommended approval of the request for the vacation of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, in Toledo, Lucas County Ohio.

The City Council Zoning and Planning Committee on February 13, 2024, sent as approved the request for the vacation of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, in Toledo, Lucas County Ohio

The Board of Revision met on April 4, 2024 and approved the request for the vacation of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, in 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. Fees totaling \$\$19,806.88 have been waived.

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 of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and all of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and all of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River, in Toledo, Lucas County Ohio ; and more fully described as follows:

All of the existing right of way of Magnolia from the southeasterly right of way of vacated Water Street to the northwesterly Harbor line of the Maumee River and

All of the full existing right of way of Olive Street from the southeasterly right of way of vacated Water Street to the northwesterly harbor line of the Maumee River and

All of the full existing right of way of Elm Street lying southeasterly of the southeasterly right of way of Water Street prolonged to the northeast to the northwesterly harbor line of the Maumee River

SECTION 2. That the vacation(s) herein shall be subject to compliance of the following 6 (six) condition(s):

The following condition is listed by agency of origin. Applicants are encouraged to contact the agency to address compliance with their conditions.

Law Department

1. Within the limits allowed by law, the applicant shall indemnify the City of Toledo, its officials, agents or employees, from any and all claims, demands, causes of action, suits or liability in connection with the performance of any and all acts authorized or permitted under this vacation. Said indemnification language shall be contained within and evidenced by the endorsement on a certified copy of the final vacating legislation by the owner which indemnification shall be kept in the permanent file of the Clerk of Council.

2. That a full width easement in favor of the City of Toledo is retained across, under and through said vacated area as described in Section 1 herein for the purpose of the City of Toledo's maintaining, operating, renewing, reconstructing, and removing utility facilities. All City of Toledo facilities located within said vacated area are hereby dedicated to the City of Toledo for exclusive City of Toledo utility use only and shall not be combined with easements or rights for other utilities. The easement retained by the City of Toledo 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 of Toledo. The City of

Toledo shall be released and held harmless for any liability, responsibility costs, or damages resulting from the City of Toledo's removal of any barriers which impede the City of Toledo ingress or egress from the easement or which obstruct access to the utilities located within the vacated area. The City of Toledo 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 of Toledo. 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. Further, the Owner's' of the vacated area shall be responsible for the relocation of any utility facilities or equipment, whether owned by a public or private utility within the vacated area or preserving access to such utility facilities. Utility facilities include conduits, cables, wires, towers, poles, sewer lines, pipelines, gas and water lines, or other equipment of any railroad or public utility, located on, over or under the portion of the vacated area. 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 of Toledo shall be released and held harmless for any liability, responsibility, costs, or damages resulting from Owner's' construction or activities in the vacated area, that interferes with any utility easement retained as a matter of law in accord with Section 723.041 of the Ohio Revised Code.

Division of Traffic Management

3. Traffic Management does not have any issues provided all owners of property abutting said streets agree to the vacation of said streets.

Engineering Services

4. A full width (82.5-foot) easement shall be retained by the City of Toledo over vacated Magnolia Street right-of-way. The following language shall appear in the authorizing vacation ordinance which shall be recorded and a notation placed in the remarks section of the County's real estate records:

- a. "That an 82.5-foot easement is hereby retained over, across, under and through said vacated area for the existing water main 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 hereon 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 construction any utilities located within the easement. No temporary or permanent structure 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 and egress from 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."

Plan Commission

5. A full width (66-foot) easement shall be retained by the City of Toledo over vacated Olive Street right-of-way. The language of said easement shall be subject to approval by the Commissioner of Engineering Services and shall be recorded and a notation placed in the remarks section of the County's real estate records.

6. A Special Use Permit, Maumee Riverfront Overlay District Review, and Summit Street Corridor Redevelopment Urban Neighborhood Overlay District Review shall be required for any future developments within the vacated area in accordance with the provisions of the Toledo Municipal Code.

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: April 24, 2024, as an emergency measure: yeas 12, nays 0.

Attest:

Julie A. Gibbons
Clerk of Council

Carrie Hartman
President of Council

Approved:

April 24, 2024
Wade Kapszukiewicz
Mayor