



## Legislation Text

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**File #:** O-314-20, **Version:** 1

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Zoning & Planning Committee

**Declaring the vacation of that portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, 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. 447-19 adopted on September 17, 2019, declaring its intent to vacate that portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, 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 portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, 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 portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, 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 portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, in the City of Toledo, Lucas County, Ohio; and the waiver of all land costs.

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 the Council of the City of Toledo does hereby vacate a portion of a vacation of that portion of Kelly Avenue, adjacent to lot 20 in the Plat of Fairfax, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

Legal Description of Proposed Kelly Vacation: in the City of Toledo, Lucas County, Ohio, bounded and described as follows:

Commencing at a 1 inch iron bar monument found at the intersection of the centerlines of Central Avenue and Kelly Avenue.

Thence North 00 degrees, 54 minutes, 12 seconds West, along the centerline of Kelly Avenue, a distance of 35.00 feet to a point on the existing North 35 foot Right-of-way of Central Avenue.

Thence North 89 degrees, 50 minutes, 49 seconds East, along the existing North 35 foot Right-of-way of Central Avenue, a distance of 30.00 feet to a point on the East Right-of-way of Kelly Avenue, said point being the True Point of Beginning.

Thence North 00 degrees, 54 minutes, 12 seconds West, along the East Right-of-way of Kelly Avenue, a distance of 14.00 feet to a point on the North Right-of-way of Central Avenue, from said point an iron bar can be found 0.04 feet East and 0.05 feet South.

Thence South 27 degrees, 00 minutes, 48 seconds East, along the North Right-of-way of Central Avenue, a distance of 10.02 feet to a point of deflection of the North Right-of-way of Central Avenue, from said point a 1/2 inch iron pipe can be found 0.10 feet East.

Thence South 75 degrees, 16 minutes, 15 seconds East, along the North Right-of-way of Central Avenue, a distance of 19.68 feet to a point on the existing North 35 foot Right-of-way of Central Avenue.

Thence South 89 degrees, 50 minutes, 49 seconds West, along the existing North 35 foot Right-of-way of Central Avenue, a distance of 23.37 feet to the True Point of Beginning.

Containing 89.92 square feet or 0.0021 acres of land. Bearings used herein are based upon an assumed meridian and are intended to indicate angular measurement only. All 1/2 inch galvanized steel pipe set are capped with the company name and PLS No. 7476. This legal description is based upon a field survey prepared by Lewandowski Engineers on September 4, 2019.

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

The following four (4) 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. A pre-submittal meeting is not required, however one may be requested. Contact information is as follows:

Division of Engineering Services: ph. 419-245-1315, fax 419-936-2850  
Right-of-Way and Inspection: 419-245-1341  
Roadway: 419-245-1344  
Water: 419-936-2163  
Stormwater Drainage: 419-245-3221; 419-245-1338  
Sanitary Sewers: 419-936-2276

Buckeye Cablevision

2. In order for buckeye to approve this vacate, Buckeye needs to be granted an easement to ensure it has access & rights to its facilities.

Fire Prevention

3. There is a fire hydrant along this portion of Kelly Avenue which needs to remain or be relocated.

#### Plan Commissions

4. A Site Plan Review shall be required for any future developments on the Vacation area in accordance with the provisions of the Toledo Municipal Code Part Eleven, Planning and Zoning, Sec. 1111.0800, *Site Plan Review*.

SECTION 3. That the fees for this vacation are waived in the amount of \$138.38 consistent with the development agreement authorized by Ordinance 188-19.

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.

SECTION 5. That the Real Estate Section of the Department of Neighborhoods and Business 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 \_\_\_\_\_, nays \_\_\_\_\_.

Passed: \_\_\_\_\_, as an emergency measure: yeas \_\_\_\_\_, nays \_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
President of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

I hereby certify that the above is a true and correct copy of an Ordinance passed by Council

\_\_\_\_\_.

Attest: \_\_\_\_\_  
Clerk of Council