



## Legislation Text

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**File #:** O-363-23, **Version:** 1

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The Clerk Reports

**Amending Ordinance 312-20 which declared the vacation of the 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores in the City of Toledo, Lucas County, Ohio; by removing the retention of the Utility Easement; waiving all fees; and declaring an emergency.**

### SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 445-19 adopted on September 17, 2019, declaring its intent to vacate a 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores in the City of Toledo, Lucas County, Ohio; as more fully described in Section 1 hereof. On February 13, 2020, the Toledo City Plan Commission recommended approval of the request for the vacation of a 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores 30-foot right-of-way strip within the, Plat made by Commissioners in Partition” 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 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores, 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 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores, in the City of Toledo, Lucas County, Ohio, and the waiver of all acquisition costs.

A request has been made by the applicant that Ordinance 312-20 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 312-20 the Council of the City of Toledo vacated a portion of a 5-foot strip adjacent to Lots 6-7 in the Plat of West Central Stores, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

Legal Description of Proposed Central Avenue 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 Central Avenue and Briar Cliff Road. Thence South 00 degrees, 09 minutes, 10 seconds East, along the centerline of Briar Cliff Road, a distance of 40.00 feet to a point.

Thence South 89 degrees, 50 minutes, 33 seconds West, a distance of 30.00 feet to a cross cut on the Northerly prolongation of the West Right-of-way of Briar Cliff Road, said point being the True Point of Beginning.

Thence South 00 degrees, 09 minutes, 10 seconds East, along the Northerly prolongation of the West Right-of-

way of Briar Cliff Road, a distance of 15.00 feet to a point on the South Right-of-way of Central Avenue. Thence North 45 degrees, 08 minutes, 55 seconds West, along the South Right-of-way of Central Avenue, a distance of 14.14 feet to a point on the existing South 45 foot Right-of-way of Central Avenue. Thence South 89 degrees, 50 minutes, 33 seconds West, along the existing South 45 foot Right-of-way of Central Avenue, a distance of 115.04 feet to a point on the West line of Lot 6 of West Central Stores as recorded in Lucas County Plat Volume 57, Page 01. Thence North 00 degrees, 09 minutes, 10 seconds West, along the West line of Lot 6, a distance of 5.00 feet to a point on the proposed South 40 foot Right-of-way of Central Avenue. Thence North 89 degrees, 50 minutes, 33 seconds East, along the proposed South 40 foot Right-of-way of Central Avenue, a distance of 125.04 feet to the True Point of Beginning. Containing 675.19 square feet or 0.0155 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 July 02, 2020.

SECTION 2. That Section 4 of Ordinance 312-20, 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 312-20 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 312-20 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