



## Legislation Text

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**File #:** O-013-20, **Version:** 1

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Zoning & Planning Committee

**Declaring the vacation of the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south, being in the City of Toledo, Lucas County, Ohio; and declaring an emergency.**

### SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 315-19 adopted on June 26, 2019, declaring its intent to vacate the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south, in the City of Toledo, Lucas County, Ohio, as more fully described in Section 1 hereof.

On August 8, 2019, the Toledo City Plan Commission recommended approval of the request for the vacation of the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south.

The City Council Zoning and Planning Committee on September 18, 2019, sent as approved the request for the vacation of a the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south.

The Board of Revision met on October 25, 2019 and approved the request for the vacation of the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south.

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 the 80.00 foot wide Water Street running from Jefferson Avenue to the north and Monroe Street to the south, in the City of Toledo, Lucas County, Ohio; and more fully described as follows:

### RIGHT-OF-WAY VACATION LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PART OF JEFFERSON AVENUE (80 FEET WIDE) AND WATER STREET (VARIABLE WIDTH), BEING BOUNDED ON THE NORTH BY JEFFERSON AVENUE (80 FEET WIDE), ON THE SOUTH BY MONROE STREET (80 FEET WIDE), ON THE WEST BY N. SUMMIT STREET (80 FEET WIDE), AND ON THE EAST BY THE HARBOR LINE OF THE MAUMEE RIVER AS ESTABLISHED BY THE SECRETARY OF WAR ON MARCH 19, 1896, AS SHOWN ON THE PORT LAWRENCE DIVISION OF THE CITY OF TOLEDO, LUCAS COUNTY,

OHIO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE ON N. SUMMIT STREET (80 FEET WIDE) WITH THE SOUTHERLY RIGHT OF WAY LINE OF JEFFERSON AVENUE (80 FEET WIDE); THENCE NORTH 33 DEGREES 11' 27" EAST, 5.75 FEET ON THE NORTHEASTERLY EXTENSION OF THE EASTERLY RIGHT OF WAY LINE OF SAID N. SUMMIT STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 33 DEGREES 11' 27" EAST, 20.24 FEET; THENCE SOUTH 56 DEGREES 37' 27" EAST, 255.45 FEET; THENCE SOUTH 34 DEGREES 00' 00" WEST, 25.03 FEET TO THE EASTERLY LINE OF WATER STREET (VARIABLE WIDTH-TO BE VACATED); THENCE ALONG SAID EASTERLY LINE THE FOLLOWING 10 COURSES: 1.) SOUTH 56 DEGREES 11' 15" WEST, 52.98 FEET; 2.) SOUTH 66 DEGREES 30' 57" WEST, 28.56 FEET; 3.) SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1307.23 FEET, AN ARC DISTANCE OF 133.08 FEET, A CENTRAL ANGLE OF 05 DEGREES 49' 58", HAVING A CHORD DISTANCE OF 133.02 FEET AND A CHORD BEARING OF SOUTH 56 DEGREES 27' 35" WEST; 4.) SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 337.33 FEET, AN ARC DISTANCE OF 56.87 FEET, A CENTRAL ANGLE OF 09 DEGREES 39' 24", HAVING A CHORD DISTANCE OF 56.81 FEET AND A CHORD BEARING OF SOUTH 54 DEGREES 00' 24" WEST; 5.) SOUTHWESTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 680.94 FEET, AN ARC DISTANCE OF 126.37 FEET, A CENTRAL ANGLE OF 10 DEGREES 38' 02", HAVING A CHORD DISTANCE OF 126.20 FEET AND A CHORD BEARING OF SOUTH 46 DEGREES 22' 35" WEST; 6.) SOUTH 39 DEGREES, 38' 57" WEST 77.00 FEET; 7.) SOUTHEASTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 10.02 FEET, AN ARC DISTANCE OF 18.14 FEET, A CENTRAL ANGLE OF 103 DEGREES 42' 21", HAVING A CHORD DISTANCE OF 15.76 FEET AND A CHORD BEARING OF SOUTH 09 DEGREES 10' 06" EAST; 8.) ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 155.41 FEET, AN ARC DISTANCE 73.64 FEET, A CENTRAL ANGLE OF 27 DEGREES 08' 53", HAVING A CHORD DISTANCE OF 72.95 FEET AND A CHORD BEARING OF SOUTH 40 DEGREES 58' 44" EAST; 9.) ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 34.83 FEET, AN ARC DISTANCE OF 11.53 FEET, A CENTRAL ANGLE OF 18 DEGREES 57' 17", HAVING A CHORD DISTANCE OF 11.47 FEET AND A CHORD BEARING OF SOUTH 18 DEGREES 51' 00" EAST; 10.) SOUTH 15 DEGREES 07' 51" EAST, 11.08 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF SAID MONROE STREET; THENCE NORTH 56 DEGREES 49' 59" WEST, 156.67 FEET ALONG SAID RIGHT OF WAY LINE TO THE WESTERLY RIGHT OF WAY LINE OF SAID WATER STREET; THENCE NORTH 40 DEGREES 03' 54" EAST, 496.84 FEET ALONG SAID RIGHT OF WAY LINE TO THE SOUTHERLY RIGHT OF WAY LINE OF JEFFERSON AVENUE; THENCE NORTH 56 DEGREES 50' 24" WEST, 89.93 FEET ALONG SAID RIGHT OF WAY LINE; THENCE NORTH 33 DEGREES 09' 36" EAST, 5.75 FEET; THENCE NORTH 56 DEGREES 50' 24" WEST, 19.50 FEET TO THE EASTERLY RIGHT OF WAY LINE OF SAID N. SUMMIT STREET AND THE POINT OF BEGINNING AND CONTAINING 1.109 ACRES.

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

The following fifteen (15) 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

2. Easements are needed to maintain the public waterlines in vacated Water Street between Monroe Street and Jefferson Avenue, and in Jefferson Avenue between Summit Street and Water Street. Full width easements shall be retained by the City of Toledo over vacated 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:

"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."

3. If the petitioner wishes to reduce the size of the easement, 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 ten-foot (20') easement. The survey shall be conducted by and paid for by the petitioner.

4. The above described full width easements are needed for the future maintenance, repairs, replacements, etc. of existing public storm infrastructure. At the time of future city approval of redevelopment plans, if any public storm infrastructure remains within, a new easement or easements of reduced size and scope may be provided with dimensions found satisfactory to the city at that time based on the approved redevelopment plan.
5. Sanitary sewer located in street shall become 'Private Sewer' if area is vacated. All maintenance and repair on the sewer line shall be the responsibility of the property owner.

#### Toledo Edison

6. Toledo Edison has existing underground electrical facilities within a conduit/manhole system which lies in the proposed area to be vacated. These facilities currently serve the Fort Industry Square complex, as well as the ProMedica Campus and Hensville, and therefore will need to remain in place.
7. Truck access will need to be maintained throughout the vacated area. Any new pavement shall be able to support a 40,000 lb line truck. Line trucks will need to be able to drive up to the existing manholes in this area for future operation and maintenance of our distribution system.

#### Buckeye Telesystems

8. 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.
9. Buckeye approves the vacation of Water Street 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 the locations where Buckeye will relocate to. The locations for Buckeye's relocated facilities will be worked out with the engineer with Giffels Webster & the developer.

#### Fire Prevention

10. Access to the two hydrants at the rear of Fort Industry Square along Water St. needs to be maintained.

#### Division of Transportation

11. New lane configuration for Jefferson Street South of Summit is required to be 12' outer lanes with a 10' turn lane.
12. An agreement with ProMedica must be established to allow ProMedica workers use of the existing Water Street until lane alignment is established and completed for Jefferson Street allowing for left turn onto Summit Street South bound.
13. 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 for 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.

#### Plan Commission

14. 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*.
15. Public Access shall be maintained indefinitely for vehicular and pedestrian access between Jefferson Avenue and Monroe Street.

SECTION 3. 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 4. That a non-exclusive perpetual easement in favor of the City is retained for the purpose of providing public vehicular and pedestrian access between Jefferson Avenue and Monroe St across a portion of the vacated area described in Section 1 or as specified on a site plan that encompasses the vacated area that has been approved in accordance with the requirements of the Toledo Municipal Code.

SECTION 5. That costs of maintenance and future improvements to be paid by the owners of the property and the retention by the City of an easement for public access and use as provided in Section 4 shall be deemed consideration in lieu of vacation fees under Council Rule VI(A).

SECTION 6. 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 7. 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 8. 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