



## Legislation Text

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**File #:** O-060-22, **Version:** 1

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Zoning & Planning Committee

### **Declaring the vacation of the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street, in the City of Toledo, Lucas County, Ohio; and declaring an emergency.**

#### SUMMARY & BACKGROUND:

The Council of the City of Toledo, by Resolution No. 464-20 adopted on November 17, 2020, declaring its intent to vacate the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street, in the City of Toledo, Lucas County, Ohio; as more fully described in Section 1 hereof.

On January 14, 2021, the Toledo City Plan Commission recommended approval of the request for the vacation of the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street, in the City of Toledo, Lucas County, Ohio.

The City Council Zoning and Planning Committee on February 17, 2021, sent as approved the request for the vacation of the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street, in the City of Toledo, Lucas County, Ohio.

The Board of Revision met on May 13, 2021 and approved the request for the vacation of the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street, 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.

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

SECTION 1. That the City Council does hereby declare its intent to vacate the 10-foot-wide alley between Oak Street and Kingston Avenue, north of Earl Street. Commencing at the Northeast corner of Lot Six (6) in Whipple's Subdivision of Lot Numbers Forty -one (41), Forty-two (42) and part of Lot Forty (40) in Fassett's Subdivision of the North part of the West half (½) of the Northwest quarter (¼) of Section 7, Town Ten (10), Range Eight (8) East in the City of Toledo, Ohio. Thence, East, a distance of Twelve (12) feet, on the North property line of said lot Six (6) extended. Said point also being the intersection of the South line of Lot Thirteen (13) ) in Whipple's Subdivision of Lot Numbers Forty -one (41), Forty-two (42) and part of Lot Forty (40) in Fassett's Subdivision of the North part of the West half (½) of the Northwest quarter (¼) of Section 7, Town Ten (10), Range Eight (8) East in the City of Toledo, Ohio and the East line of a, Twelve (12) foot wide, Alley running North and South between Oak Street and Kingston Avenue. Said point being the Point of Beginning. Thence, East on the South property line of said Lot Thirteen (13) to the intersection of the West Right-of-Way line of Kingston Avenue. Said point being the Southeast corner of said Lot Thirteen (13). Thence, South, a distance of Ten (10) feet to a point. Said point being the Northeast corner of Lot 4 in The

Duke, a Replat of Lots Fourteen (14) thru Twenty (20) in Whipple's Subdivision of Lot Numbers Forty -one (41), Forty-two (42) and part of Lot Forty (40) in Fassett's Subdivision of the North part of the West half (½) of the Northwest quarter (¼) of Section 7, Town Ten (10), Range Eight (8) East in the City of Toledo, Ohio. Thence, West, a distance of 121.25 feet on the North property line of said Lot 4 to a point. Said North line being South and Ten (10) feet parallel to the South property line of said lot Thirteen (13). Thence, Southwest, a distance of 8.49 feet on the Northwest line of said Lot Four (4) to the intersection of said East line of a, Twelve (12) foot wide, Alley running North and South between Oak Street and Kingston Avenue. Thence, North, a distance of 16.00 feet more or less to the Point of Beginning. The above described area contains 1289.2500 Square Feet or 0.0296 Acre of land more or less.

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

The following three (3) 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 Storm

1. A 10-foot easement 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 10-foot easement is hereby retained over, across, under and through said vacated area as described in Section 1 herein, for the existing sewer located in said vacated right of way, together with any other utilities located therein, as they exist at the time of passage of this Ordinance. 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, nor plant trees or other large vegetation which would impede access onto 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 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.”

#### Division of Transportation

2. 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.

Plan Commission

3. The proposed vacation cannot result in the loss of access for any abutting properties.

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. Payment of fees for costs was paid at the rate of \$1,382.40

SECTION 5. 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 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 12, nays 0.

Passed: February 15, 2022, as an emergency measure: yeas 12, nays 0.

Attest:

Gerald E. Dendinger  
Clerk of Council

Matt Cherry  
President of Council

Approved:

February 15, 2022  
Wade Kapszukiewicz  
Mayor