

City of Cincinnati

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An Ordinance No. 128

- 2021

AUTHORIZING the City Manager to vacate and sell to Auburn Land Holdings LLC approximately 0.5046 acres of the public right-of-way known as Macauley Street in the Mt. Auburn neighborhood.

WHEREAS, the City of Cincinnati owns approximately 0.5046 acres of real property designated as public right-of-way commonly known as Macauley Street, as more particularly depicted and described in the *Property Sale Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the "Property"), which Property is under the management and control of the City's Department of Transportation and Engineering ("DOT"); and

WHEREAS, Auburn Land Holdings LLC, an Ohio limited liability company, an affiliate of Uptown Rental Properties, LLC, an Ohio limited liability company ("Petitioner"), owns or controls adjoining properties and desires to purchase the Property from the City for incorporation into Petitioner's adjoining properties to facilitate a proposed mixed-use development project that consists of approximately 100,000 square feet of commercial space, approximately 28,000 square feet of office space, and approximately 29,000 square feet of residential space (the "Project"); and

WHEREAS, Alan S. Henderson, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided the following: (i) an Attorney's Certificate of Title dated March 24, 2021, certifying that Petitioner, Marshall C. Hunt, Jr., the City, 45 WHT LLC, and 35 E. McMillan Avenue LLC are the owners of all real property abutting the Property, and (ii) the written consent of all necessary abutters to the City's vacation and sale of the Property to Petitioner; and

WHEREAS, pursuant to Ohio Revised Code Sec. 723.04, the City may, upon petition, vacate a street or alley if it has determined that there is good cause for the vacation and that the vacation will not be detrimental to the general interest; and

WHEREAS, pursuant to Cincinnati Municipal Code ("CMC") Sec. 331-1, the City may sell real property that is not needed for municipal purposes; and

WHEREAS, the City's Real Estate Services Division has determined, by professional appraisal, that the approximate fair market value of the Property is \$88,000; however, the City is agreeable to convey the Property for \$1.00 because the City will receive equivalent economic and non-economic benefits from the Project that equal or exceed the fair market value of the Property because the Project will preserve and create jobs, create additional housing, and stimulate economic growth in the Mt. Auburn neighborhood, for the benefit of the people of the City; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, pursuant to CMC Sec. 331-5, the City Council may authorize the sale of City-owned real property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and sale of the Property at its meeting on May 22, 2020; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to vacate and sell to Auburn Land Holdings LLC, an Ohio limited liability company ("Petitioner"), an approximately 0.5046 acre portion of the public right-of-way known as Macauley Street in the Mt. Auburn neighborhood, as more particularly described as follows (the "Property"):

Situated in City of Cincinnati, Hamilton County, Ohio, and being more particularly described as follows:

COMMENCING at the intersection of the original south line of E. McMillan Street and east line of Macauley Street;

Thence with the east line of said Macauley Street, South 05°48'42" West, 4.48 feet to a set cross notch and the POINT OF BEGINNING;

Thence with the east line of said Macauley Street, South 05°48'42" West, 439.26 feet to the southeast terminus of said Macauley Street referenced by an existing one-inch pipe 0.24 feet North and 2.61 feet West;

Thence with the terminus of said Macauley Street, North 84°44'10" West, 50.00 feet to an existing concrete monument at the southwest terminus of said Macauley Street;

Thence with the west line of said Macauley Street, North 05°48'42" East, 439.91 feet to a set iron pin;

Thence with the prolongation of the approximate limits of the proposed south right of way of aforesaid E. McMillan Street, South 83°59'37" East, 50.00 feet to the POINT OF BEGINNING.

CONTAINING 0.5046 ACRES and being subject to all legal easements and highways of record.

The above described parcel being part of the right of way of Macauley Street.

The bearings are based on State Plane Coordinate System Ohio South Zone (NAD83).

All iron pins set are 5/8" X 30" rebar with cap stamped "G.J. BERDING SURVEYING, INC."

Section 2. That the Property is not needed for transportation or other municipal purposes, that there is good cause to vacate and sell the Property, and that such vacation and sale will not be detrimental to the general interest.

Section 3. That the fair market value of the Property, as determined by appraisal by the City's Real Estate Services Division, is approximately \$88,000, however, the City is agreeable to convey the Property for \$1.00 because the City will receive equivalent economic and non-economic benefits from Petitioner's proposed mixed-use development project that consists of approximately 100,000 square feet of commercial space, approximately 28,000 square feet of office space, and approximately 29,000 square feet of residential space (the "Project"), which economic and non-economic benefits are anticipated to equal or exceed the fair market value of the Property because the Project will preserve and create jobs, create additional housing, and stimulate economic growth in the Mt. Auburn neighborhood, for the benefit of the people of the City.

Section 4. That eliminating competitive bidding in connection with the City's sale of the Property is in the best interest of the City because Petitioner owns or controls all real property that abuts the Property, or otherwise has obtained the consent of all necessary abutters to the City's vacation and sale of the Property, and as a practical matter no one other than an abutting property owner would have any use for it. Also, the sale of the Property to Petitioner will enable Petitioner to assemble a buildable site to accommodate the construction of a proposed mixed-use development, thereby putting the currently undeveloped land to a productive use that will provide the City with jobs and other economic benefits.

Section 5. That the proceeds from the sale of the Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the sale, and that the City's Finance Director is hereby authorized to deposit amounts in excess amount thereof into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the City's Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements," in which "YY" represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

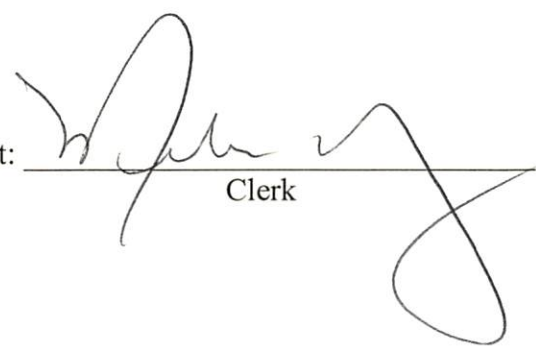
Section 7. That, pursuant to Ohio Revised Code Sec. 723.041, any affected public utility shall be deemed to have a permanent easement in the Property for the purpose of maintaining, operating, renewing, reconstructing, and removing its utility facilities and for purposes of access to said facilities.

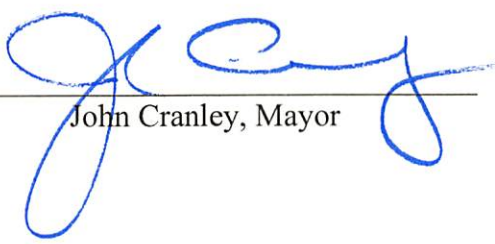
Section 8. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including, without limitation, by executing any and all ancillary agreements, deeds, plats, and other documents to facilitate the vacation and sale of the Property to Petitioner, including the execution of a *Property Sale Agreement* in substantially the form attached to this ordinance as Attachment A.

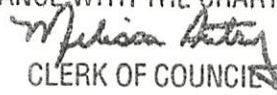
Section 9. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

Section 10. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 21, 2021

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO. 28-2021
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 5-4-2021

CLERK OF COUNCIL