

EMERGENCY
City of Cincinnati

CHM

An Ordinance No. 412

- 2021

AWG

AUTHORIZING the City Manager to execute a *Property Transfer Agreement* with Cincinnati Zoo Properties, LLC, pursuant to which the City will vacate and convey portions of certain real property designated as public right-of-way known as Louis Avenue, Euclid Avenue, and an unnamed alley; release and terminate portions of public right-of-way easements located at the intersection of Vine Street and Louis Avenue; and grant and convey encroachment easements on, under, over, and across Erkenbrecher Avenue to facilitate the construction of a new surface parking lot and aerial pedestrian bridge for the benefit of the Cincinnati Zoo and Botanical Garden in the Avondale neighborhood.

WHEREAS, the City owns the following public rights-of-way generally located south of the Cincinnati Zoo and Botanical Garden in the Avondale neighborhood, as more particularly depicted and described in the *Property Transfer Agreement* attached to this ordinance as Attachment A and incorporated herein by reference: (i) Louis Avenue, (ii) Euclid Avenue, and (iii) an unnamed alley lying between Vine Street and Euclid Avenue (the "ROW Property"), which ROW Property is under the management of the City's Department of Transportation and Engineering ("DOT"); and

WHEREAS, the City owns the Cincinnati Zoo and Botanical Garden (the "Cincinnati Zoo"), which is under the management and control of the Board of Park Commissioners and is operated and maintained by the Zoological Society of Cincinnati, an Ohio nonprofit corporation, which owns or otherwise controls Cincinnati Zoo Properties, LLC, an Ohio limited liability company ("Petitioner"); and

WHEREAS, Petitioner owns certain real property located south of the Cincinnati Zoo, generally bound by Erkenbrecher Avenue, Euclid Avenue, Shields Street, and Vine Street ("Petitioner's Property"); and

WHEREAS, Petitioner desires to improve Petitioner's Property by reconstructing and expanding a surface parking lot and constructing a pedestrian bridge across Erkenbrecher Avenue to connect the surface parking lot to the Cincinnati Zoo (the "Project"); and

WHEREAS, to facilitate the Project, Petitioner has petitioned the City for the following: (i) to vacate and convey portions of the ROW Property to Petitioner; (ii) to release and terminate certain portions of public right-of-way easements presently encumbering the Zoo Property at the intersection of Vine Street and Louis Avenue (the "ROW Easements"); and (iii) to grant encroachment easements on, under, over, and across Erkenbrecher Avenue to allow for the construction of the proposed aerial pedestrian bridge (the "Pedestrian Bridge Easement"); and

WHEREAS, Tamara A. Miano, Esq., a reputable attorney practicing in Hamilton County, Ohio, has provided an Attorney's Certificate of Title dated October 7, 2021, certifying that the City and Petitioner are the owners of all real property abutting the ROW Property; 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, the City Manager, in consultation with DOTE, has determined that: (i) the ROW Property and ROW Easements are not needed for transportation purposes or any other municipal purpose; (ii) there is good cause to vacate the ROW Property and to release and terminate the ROW Easements; (iii) the vacation of the ROW Property and the release and termination of the ROW Easements will not be detrimental to the general interest; (iv) granting the Pedestrian Bridge Easement will not have an adverse effect on the City's retained interest in the Erkenbrecher Avenue public right-of-way; and (v) granting the Pedestrian Bridge Easement will not have an adverse effect on the usability or accessibility of any existing Erkenbrecher Avenue public right-of-way facilities; and

WHEREAS, the City's Real Estate Services Division has determined, by professional appraisal, that: (i) the fair market value of the ROW Property, including the release of the ROW Easements, is approximately \$151,450, and (ii) the fair market value of the Pedestrian Bridge Easement is approximately \$9,823; however, the City is agreeable to convey the aforementioned interests in real property for \$0.00 because the City will receive economic and non-economic benefits from the Project that are anticipated to equal or exceed the fair market value of the ROW Property, the release of the ROW Easements, and the Pedestrian Bridge Easement because the Project will enhance vehicular and pedestrian safety and circulation around the Cincinnati Zoo and will provide additional off-street parking capacity for Cincinnati Zoo patrons, which will stimulate economic activity and growth in the Avondale neighborhood; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, 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, 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 acquire, construct, enlarge, improve, or equip and to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, in furtherance of the foregoing public purpose, the City believes that the Project is in the vital and best interests of the City and the health, safety, and welfare of its residents, and is in accordance with applicable state and local laws; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation and conveyance of the ROW Property,

the release of the ROW Easements, and the grant of the Pedestrian Bridge Easement at its regularly scheduled meeting on September 17, 2021; 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 execute a *Property Transfer Agreement* with Cincinnati Zoo Properties, LLC, an Ohio limited liability company (“Petitioner”), in substantially the form attached to this ordinance as Attachment A and incorporated herein by reference, pursuant to which the City of Cincinnati will (i) vacate and convey to Petitioner portions of Louis Avenue, Euclid Avenue, and an unnamed alley lying between Vine Street and Euclid Avenue (the “ROW Property”); (ii) release and terminate certain portions of public right-of-way easements presently encumbering property owned by Petitioner (the “ROW Easements”); and (iii) grant encroachment easements on, over, under, and across Erkenbrecher Avenue to allow for the construction of a proposed aerial pedestrian bridge (the “Pedestrian Bridge Easement”).

The ROW Property is more particularly described as follows:

Portions of Louis Avenue and Euclid Avenue

Situate in Section 14, Town 3, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, State of Ohio and being a portions of Louis Avenue and Euclid Avenue to be vacated, originally platted by McMillan's Subdivision of Lots 8, 14 and 20, Plat Book 3, Page 246 and Zoological Land Syndicate, Plat Book 9, Page 49, all references herein being to the records located in the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Beginning in an Iron Pin Found in the intersection of the existing southerly right of way line of Louis Avenue (50' R/W) and the westerly right of way line of Euclid Avenue (60' R/W), said Iron Pin being the TRUE POINT OF BEGINNING of the Vacation herein described; thence the following 8 courses:

In said southerly right of way of Louis Avenue, North 84° 17' 55" West, 423.39 feet to a point in the proposed easterly right of way line of Vine Street; thence

In said proposed easterly right of way line of Vine Street, North 03° 37' 44" East, 50.03 feet to a point in the northerly right of way line of Louis Avenue; thence

In said northerly right of way line of Louis Avenue, South 84° 17' 55" East, 425.08 feet to a point in the westerly right of way line of Euclid Avenue; thence

In said westerly right of way line of Euclid Avenue, North 05° 33' 45" East, 16.34 feet to a point; thence

Leaving said westerly right of way line of Euclid Avenue, South 40° 06' 23" East, 2.44 feet to the proposed westerly right of way line of Euclid Avenue; thence

In said proposed westerly right of way line of Euclid Avenue, South 05° 43' 05" West, 320.67 feet to a point; thence

In a curve to the right having a radius of 15.00 feet, a delta angle of 19° 29' 04" and an arc distance of 5.10 feet subtended by a chord which bears South 15° 27' 37" West, 5.08 feet to a point in the existing westerly right of way of Euclid Avenue; thence

In said existing westerly right of way of Euclid Avenue, North 05° 33' 45" East, 261.03 feet to the TRUE POINT OF BEGINNING of the Vacation herein described.

Containing 21,636 Sq. Ft. or 0.4967 acres. Bearings herein are based on Ohio State Plane Coordinate System, South Zone, North American Datum of 1983. Base on GPS observations of the Hamilton County GPS Horizontal Control Network.

Portion of Euclid Avenue

Situate in Section 14, Town 3, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, State of Ohio and being a portion of Euclid Avenue to be vacated, Euclid Avenue originally platted by Zoological Land Syndicate, Plat Book 9, Page 49, all references herein being to the records located in the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Beginning in the northwesterly corner in the northerly terminus of Euclid Avenue (60' R/W) and being the TRUE POINT OF BEGINNING of the Vacation herein described; thence the following 4 courses:

In the northerly right of way of Euclid Avenue, South 84° 18' 13" East, 2.06 feet to a point in the proposed westerly right of way line of Euclid Avenue; thence

In said proposed westerly right of way line of Euclid Avenue, South 05° 22' 47" West, 9.17 feet; thence

Continuing in said proposed westerly right of way line of Euclid Avenue, South 50° 43' 05" West, 2.94 feet to a point in the existing westerly right of way of Euclid Avenue; thence

In said existing westerly right of way of Euclid Avenue, North 05° 33' 45" East, 11.25 feet to the TRUE POINT OF BEGINNING of the Vacation herein described.

Containing 21 Sq. Ft. or 0.0005 acres. Bearings herein are based on Ohio State Plane Coordinate System, South Zone, North American Datum of 1983. Base on GPS observations of the Hamilton County GPS Horizontal Control Network.

Unnamed Alley

Situate in Section 14, Town 3, Fractional Range 2, Miami Purchase, City of Cincinnati, Hamilton County, State of Ohio and being a portion of a 10' unnamed alley to be vacated, originally platted by McMillan's Subdivision of Lots 8, 14 and 20, Plat Book 3, Pages 49 and 50, all references herein being to the records located in the Hamilton County, Ohio Recorder's Office and being more particularly described as follows:

Beginning in an Iron Pin Found in the intersection of the existing northerly right of way line of Shields Street (60' R/W) and the westerly right of way line of Euclid Avenue (60' R/W), thence

In said northerly right of way line of Shields Street, North 84° 17' 46" West, 211.68 feet to a point in the easterly right of way line of a 10' unnamed alley; thence

In said easterly right of way line of a 10' unnamed alley, North 05° 37' 15" East, 3.52 feet to a point in the proposed northerly right of way of said Shields Street and being the TRUE POINT OF BEGINNING of the Vacation herein described; thence the following 4 courses:

In said proposed northerly right of way of Shields Street, North 84° 16' 28" West, 10.00 feet to a point in the westerly right of way line of said 10' alley; thence

In said westerly right of way line of the 10' alley, North 05° 37' 15" East, 233.47 feet to a point in the terminus of said 10' alley; thence

In the terminus of said 10' alley, South 84° 22' 41" East, 10.00 feet to a point in the easterly right of way line of said 10' alley; thence

In said easterly right of way line of the 10' unnamed alley, South 05° 37' 15" West, 233.48 feet to the TRUE POINT OF BEGINNING of the Vacation herein described.

Containing 2,335 Sq. Ft. or 0.0536 acres. Bearings herein are based on Ohio State Plane Coordinate System, South Zone, North American Datum of 1983. Base on GPS observations of the Hamilton County GPS Horizontal Control Network.

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

Section 3. That granting the Pedestrian Bridge Easement to Petitioner (i) is not adverse to the City's retained interest in the Erkenbrecher Avenue public right-of-way; and (ii) will not have an adverse effect on the usability or accessibility of any existing Erkenbrecher Avenue public right-of-way facilities.

Section 4. That the City's Real Estate Services Division has determined, by professional appraisal, the fair market value of the ROW Property, including the release of the ROW Easements, is approximately \$151,450 and the fair market value of the Pedestrian Bridge Easement is approximately \$9,823; however, the City is agreeable to convey the aforementioned interests in real property for \$0.00 because the City will receive economic and non-economic benefits from the Project that are anticipated to equal or exceed the fair market value of the ROW Property, the release of the ROW Easements, and the Pedestrian Bridge Easement because the Project will enhance vehicular and pedestrian safety and circulation around the Cincinnati

Zoo, and will provide additional off-street parking capacity for Cincinnati Zoo patrons, which will stimulate economic activity and growth in the Avondale neighborhood.

Section 5. That eliminating competitive bidding in connection with the City's sale of the ROW Property and conveyance of the Pedestrian Bridge Easement is in the best interest of the City because Petitioner owns or controls all real property that abuts the ROW Property and Erkenbrecher Avenue, and, as a practical matter, no one other than an abutting property owner would have any use for the ROW Property and the Pedestrian Bridge Easement. Also, that the sale of the ROW Property and conveyance of the Pedestrian Bridge Easement to Petitioner will enable Petitioner to enhance vehicular and pedestrian safety and circulation around the Cincinnati Zoo and will provide additional off-street parking capacity for Cincinnati Zoo patrons, which will provide the City with economic and non-economic benefits.

Section 6. That the proceeds from the sale of the ROW Property and the conveyance of the Pedestrian Bridge Easement, 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 7. 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 8. That, pursuant to Ohio Revised Code Sec. 723.041, any affected public utility shall be deemed to have a permanent easement in the ROW Property for the purpose of

maintaining, operating, renewing, reconstructing, and removing its utility facilities and for purposes of access to said facilities.

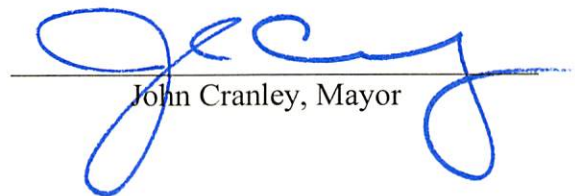
Section 9. That the City Manager and other City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance, including, without limitation, executing any and all ancillary agreements, deeds, plats, and other documents to facilitate the sale and conveyance of the ROW Property and Pedestrian Bridge Easement to Petitioner.

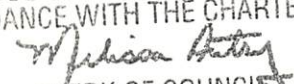
Section 10. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

Section 11. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to authorize the execution of the *Property Transfer Agreement* without delay, so that Petitioner may promptly undertake and complete construction to minimize disruptions to vehicular and pedestrian circulation patterns in and around the Cincinnati Zoo and Botanical Garden.

Passed: October 27, 2021

Attest: 
Clerk


John Cranley, Mayor

I HEREBY CERTIFY THAT ORDINANCE NO. 412-2021
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 11-9-2021

CLERK OF COUNCIL