



EMERGENCY

City of Cincinnati

MEH/B

AWB

An Ordinance No. 101

- 2022

AUTHORIZING the real property located at 621 W. Mehring Way in the Central Business District to be developed and used as an interim indoor practice facility **NOTWITHSTANDING** certain development regulations and use limitations contained in Chapter 1109, “Flood Damage Reduction,” and Chapter 1415, “Riverfront Districts,” of the Cincinnati Municipal Code and **NOTWITHSTANDING** certain other zoning regulations governing the development of proposed facility that would prevent its development and use as an interim indoor practice facility.

WHEREAS, the Hamilton County Board of Commissioners (“County”) owns the real property located at 621 W. Mehring Way in the Central Business District (“Property”), which it has leased to Cincinnati Bengals, Inc. (“Team”) for the purposes of constructing and operating an interim indoor practice facility (“Project”); and

WHEREAS, the Property consists of a single consolidated parcel (Ham. Co. PID 137-0003-0119) that spans the MG, “Manufacturing General,” and RF-M, “Riverfront Manufacturing,” zoning districts, and portions of the Property are located within the 100-year floodplain; and

WHEREAS, the Project requires legislative variances from the City’s floodplain and zoning regulations to authorize its construction and operation; and

WHEREAS, the Team is undertaking the Project to ensure the continued, ongoing success of its NFL football team, which recently won the AFC Championship and capped its exhilarating postseason with an appearance in Super Bowl LVI; and

WHEREAS, the Project will help to sustain and improve the Team’s competitiveness by allowing it to prepare for games year-round regardless of adverse weather conditions and by helping it to attract high-impact free agents; and

WHEREAS, helping the Team in its pursuit of success on the field can also foster a sense of community within the city and the larger region, as experienced earlier this year during the Team’s postseason march, and it will provide tangible benefits in the form of enhanced tax revenues, riverfront investment, and greater awareness and name recognition for Cincinnati on a global and national scale; and

WHEREAS, to ensure that its plans are in alignment with the City’s plans for the construction of a shared-use path connecting the central and western riverfronts, the Team has agreed to work with the City and the County to accommodate the future construction of the Ohio River Trail West/Queensgate Connection on the south side of Mehring Way at such time as the need arises; and

WHEREAS, the requested variances from floodplain regulations include the ability to construct an interim indoor practice facility outside the dry floodproofing requirements and below the floor elevation standards set forth in Cincinnati Municipal Code (“CMC”) Section 1109-11(5)(b); and

WHEREAS, to account for the deviation from these provisions, the Team has established that the proposed facility’s foundation and stem walls are flowable and capable of withstanding hydrostatic, hydrodynamic, and buoyancy forces that occasion flood events; and

WHEREAS, further, the Team has developed a flood action plan that calls for the removal of all remaining equipment and above-ground improvements to secure the site and ensure that all components that may be threatened by floodwaters are removed prior to flood events; and

WHEREAS, the requested variances from zoning regulations include the ability to establish an interim indoor practice facility in the RF-M, “Riverfront Manufacturing,” zoning district and to install certain other signage and site improvements that deviate from standard zoning requirements; and

WHEREAS, the deviation from zoning regulations permitting those portions of the Property located in the RF-M, “Riverfront Manufacturing,” zoning district to be used consistently with those portions located in the MG, “Manufacturing General,” zoning district, where those uses are permitted, will allow for the cohesive development and use of the Property; and

WHEREAS, the requested deviations from zoning regulations applicable to signage and site improvements will permit the Project to be constructed to a standard that is consistent with similar facilities found across the NFL and pose no adverse effects to the surrounding area, which is surrounded by elevated expressways and commercial and industrial uses; and

WHEREAS, the City Planning Commission, at its regularly scheduled meeting on April 15, 2022, upon considering the factors set forth in CMC Section 111-5, recommended the adoption of a notwithstanding ordinance authorizing the Project subject to certain conditions; and

WHEREAS, the legislative variances authorizing the Project are consistent with *Plan Cincinnati* (2012), specifically within the Compete Initiative Area goal to “[f]oster a climate conducive to growth, investment, stability and opportunity” (pg. 103); the strategy to “[g]row our own” by focusing on retention, expansion and relocation of existing businesses” (pg. 104); and the goal to “become nationally and internationally recognized as a vibrant and unique city” (pg. 121); and

WHEREAS, the Council finds that the Project will contribute to the city’s energy, economic vitality, and job growth; facilitate the development of the local professional sports industry, a major economic and employment generator for the region; and ensure that development of the Property has a minimal impact on the floodplain environment and public safety; and

WHEREAS, the Council additionally finds that permitting the Project will not have an adverse effect on the character of the area or the public health, safety, and welfare, and that the

Project is in the best interests of the City and the public's health, safety, morals, and general welfare; now, therefore,

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

Section 1. That, following its own independent review and consideration, the City Council incorporates the foregoing recitals as if fully rewritten herein, and it hereby confirms that the Cincinnati Bengals, Inc.'s ("Team") request for legislative variances to authorize its development and use of the property located at 621 W. Mehring Way (Ham. Co. PID 137-0003-0119) ("Property") in the Central Business District as an interim indoor practice facility ("Project") satisfies the criteria set forth in Cincinnati Municipal Code ("CMC") Section 111-5 in all respects. The Property is depicted on the map, attached hereto as Exhibit A and incorporated herein by reference, and the Project is depicted on the plans, attached hereto as Exhibits B-1 and B-2 and incorporated herein by reference.

Section 2. That the Council specifically finds that a legislative variance authorizing the Team to pursue the Project will not have an adverse effect on the character of the surrounding area or the public's health, safety, and general welfare, and that it is consistent with the purposes of the CMC and the zoning district within which the Property is located, taking into account the factors listed in CMC Section 111-5.

Section 3. That, in addition, following its own independent review and consideration of the criteria for floodplain variances set forth in 44 CFR 60.6 and CMC Section 1109-13-3, the Council confirms the Team has made a showing of good and sufficient cause that it will suffer exceptional hardship if it is denied the ability to construct an interim indoor practice facility outside the dry floodproofing requirements and below the floor elevation standards set forth in CMC Section 1109-11(5)(b).

Section 4. That the Council finds that a legislative variance authorizing the construction of an interim indoor practice facility on the Property is the minimum necessary to relieve the Team from this exceptional hardship and that granting the variances will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, result in fraud on or victimization of the public, or conflict with existing local laws or ordinances, because the design of the proposed practice facility and operational plans established by the Team will serve to minimize flood damages during a base flood and will pose no additional threats to public safety.

Section 5. That the Council authorizes the Property's development and use as an interim indoor practice facility, subject to the terms and conditions set forth in this ordinance. This authorization is granted notwithstanding the development limitations contained in CMC Section 1109-11(5)(b), the use limitations contained in CMC Chapter 1415, "Riverfront Districts," and applicable zoning regulations that would prevent the Property's development and use as an interim indoor practice facility, as proposed, including, but not limited to, the fence height requirements set forth in CMC Chapter 1421, "General Site Standards," the off-street parking requirements and standards set forth in CMC Chapter 1425, "Parking and Loading Regulations," and the signage size, height, and maximum number limitations set forth in CMC Chapter 1427, "Signage Regulations."

Section 6. That the Council's authorization of the Property's development and use as an interim indoor practice facility is subject to the following conditions:

- a. That the Property shall be developed substantially consistent with the plans attached hereto as Exhibits B-1 and B-2 and those on file with the Department of Buildings and Inspections under permit nos. 2022P02833 and 2022P02861 ("Plans"); and
- b. That the authorizations granted herein include permission to construct additional site improvements, including fencing up to 8 feet in height and lighting, that are

substantially consistent with the Plans and incidental thereto, subject to the floodplain administrator's determination that the site improvements comply with the requirements of CMC Chapter 1109, "Flood Damage Reduction," or are designed to provide an equivalent measure of safety that minimizes the potential for flood damages and threats to public safety during a flood event; and

- c. That the authorizations granted herein are contingent upon the Team's implementation of the flood action plan, attached hereto as Exhibit C and incorporated herein by reference, which plan shall provide for reporting upon the City's request following a base flood event and for coordination between the Team and the City on supplementary operational measures as are necessary to minimize the potential for flood damages and threats to public safety during a base flood event, and which plan shall not be modified without the prior written consent of the floodplain administrator; and
- d. That the interim indoor practice facility shall be operated as a participant-only facility and remain subject to any occupancy limitations established by the Ohio Building Code; and
- e. That the City Manager and the appropriate City officials may order the removal of the interim indoor practice facility and the restoration of the Property, at no cost to the City: (i) upon finding that the Team has failed to comply with one or more of the conditions contained herein; (ii) at any time following the fifth anniversary of the effective date of this ordinance; or (iii) upon the Team's vacation of the Property or abandonment of the interim indoor practice facility. For the avoidance of doubt, the interim indoor practice facility shall be deemed abandoned if the Team intentionally discontinues its use and occupancy of the facility for more than 365 consecutive days.

Section 7. That this ordinance does not provide a variance from any other laws of the City of Cincinnati, and the Property shall remain subject to all other CMC provisions, including CMC Chapter 1109, "Flood Damage Reduction," CMC Chapter 1413, "Manufacturing Districts," CMC Chapter 1415, "Riverfront Districts," CMC Chapter 1421, "General Site Standards," CMC Chapter 1425, "Parking and Loading Regulations," and CMC Chapter 1427, "Signage Regulations."

Section 8. That the City Manager and the appropriate City officials are authorized to take all necessary and proper actions to implement this ordinance, including by issuing building permits

and related approvals provided they conform to applicable building codes, housing codes, accessibility laws, and other applicable laws, rules, and regulations.

Section 9. That the authorizations granted herein are specific to the Team and shall not benefit the Team's successors-in-interest, any other tenant of the Property, or the owner of the Property, and that the authorizations shall expire upon the Team's vacation of the Property or abandonment of the interim indoor practice facility. For the avoidance of doubt, the interim indoor practice facility shall be deemed abandoned if the Team intentionally discontinues its use and occupancy of the facility for more than 365 consecutive days.

Section 10. 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 allow the Project to proceed so that the interim indoor practice facility may commence operation in time for the upcoming winter season and the corresponding benefits to the City and the Central Business District may be realized at the earliest possible time.

Passed: April 27, 2022

Jan Michele Lemon Kearney
VICE - Mayor

Attest: [Signature]
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO 101-2022
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 5-10-2022
Melissa Antley
CLERK OF COUNCIL