

EMERGENCY ORDINANCE NO. 2018-28

AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, INSTALLATION, EQUIPPING, AND IMPROVEMENT OF PUBLIC IMPROVEMENTS AND DECLARING AN EMERGENCY.

WHEREAS, this Council previously adopted Emergency Resolution No. 51-2018 (the “Resolution of Necessity”) on August 28, 2018, which declared the necessity of acquiring, constructing, installing, equipping, and improving public roads, sewers, drains, water pipes, together with the facilities and appurtenances necessary and proper therefor, all as shown on the Plans and Specifications on file in the office of the Clerk of Council (the “Improvements”); and

WHEREAS, the Resolution of Necessity declared the necessity of levying Special Assessments on the Parcels in proportion to the special benefits conferred upon such Parcels from the Improvements in order to pay for costs and expenses of the Improvements; and

WHEREAS, notice of the adoption of the Resolution of Necessity and the filing of the estimated Special Assessments, as provided in Section 727.13 of the Ohio Revised Code, was waived by one hundred percent (100%) of the Owners; and

WHEREAS, the claims for damages alleged to result from, and objections to, the Improvements have been waived by one hundred percent (100%) of the Owners, and no claims for damages alleged to result from, or objections to, the Improvements have been filed within the times prescribed by Sections 727.15 and 727.18 of the Ohio Revised Code; and

WHEREAS, this Council previously adopted Emergency Ordinance No. 2018-19 (the “Original Ordinance to Proceed”) on August 28, 2018, which Original Ordinance to Proceed determined to proceed with the acquisition, construction, installation, equipping, and improvement of public improvements and declared an emergency; and

WHEREAS, one hundred percent (100%) of the Owners have filed with the City an Amendment to Petition dated October 15, 2018 (the “Amendment”) to (1) identify the property to be assessed by metes and bounds and (2) exclude from the Special Assessments any Parcel or portion thereof that the Owners convey to the City in connection with the conveyance of the Improvements to the City; and

WHEREAS, as a result of the Amendment, it is now necessary to repeal and replace the Original Ordinance to Proceed with this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO:

SECTION 1. Emergency Ordinance No. 2018-19 is hereby repealed and replaced in its entirety with this Ordinance.

SECTION 2. Capitalized terms not otherwise defined in this Ordinance shall have the meaning assigned to each such term in the Petition attached as Appendix A to the Resolution of Necessity.

SECTION 3. This Council does hereby accept, ratify, adopt, and approve the Amendment, a copy of which is attached hereto as Exhibit A.

SECTION 4. This Council is determined to proceed with the acquisition, construction, installation, equipping, and improving of the Improvements in accordance with the Resolution of Necessity and the Plans and Specifications.

SECTION 5. Any claims for damages resulting from the Improvements that have been legally filed shall be inquired into after completion of the Improvements, and the Law Director is hereby authorized and directed to institute legal proceedings in a court of competent jurisdiction to inquire into such claims in accordance with all legal requirements.

SECTION 6. The estimated Special Assessments to be assessed in accordance with the Resolution of Necessity are hereby adopted, and such Special Assessments shall be assessed in the manner set forth in the Resolution of Necessity in proportion to the special benefits conferred upon the Parcels from the Improvements and in accordance with the Petition, as amended by the Amendment.

SECTION 7. In accordance with Section 319.61 of the Ohio Revised Code, the Clerk of Council is authorized and directed to deliver a certified copy of this Ordinance to the County Auditor within 15 days after its passage.

SECTION 8. The City is authorized to enter into a Cooperative Agreement with the Warren County Port Authority (the "Cooperative Agreement"), in substantially the form on file with the Clerk of this Council, together with such changes that are not substantially adverse to the City, and such other agreements, certificates, and documents as the Mayor, the City Manager, the Law Director, the Director of Finance, or other appropriate officer may deem necessary or appropriate in order to provide the Improvements, and that the Mayor, the City Manager, the Law Director, the Director of Finance, or other appropriate officer of the City, or any of them is authorized to execute, on the City's behalf, such agreements and to take any other actions as may be appropriate to implement this Ordinance.

SECTION 9. It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in open meetings of this Council, and that all such deliberations of this Council and of any of its committees that resulted in any 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 10. Pursuant to Section 7.08 of the Charter, this Ordinance provides for improvements petitioned for by the owners of the requisite majority of the area of the property benefited and to be especially assessed therefor. Accordingly, this Ordinance shall take effect immediately upon its passage.

PASSED: October 23, 2018

ATTEST:



Clerk of Council

APPROVED: 

Mayor

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Municipal Law, Section 121.22 of the Ohio Revised Code.



Clerk of Council
City of Monroe, Ohio

**AMENDMENT TO THE PETITION TO ASSESS PROPERTY WITHIN THE CITY OF
MONROE TO PAY A PORTION OF THE COSTS OF PUBLIC IMPROVEMENTS**

To: *Mayor and City Council, City of Monroe, Ohio*

17ac East of Senate, LLC (the "Petitioner"), as owner of 100% of the property identified on Exhibits B and C to the Petition (as defined below) (the "Property") submitted a petition to the Mayor and City Council of the City of Monroe, Ohio (the "City") to assess the Property to pay for the costs of the Improvements, as defined therein. All capitalized terms used in this Amendment when the rules of grammar would not so require and not defined in this Amendment shall have the meanings assigned to them in the Petition. The undersigned Petitioner does hereby amend the Petition pursuant to this Amendment to Petition (the "Amendment") dated October 15, 2018 as follows:

1. Since the date of the Petition, the Property has been replatted. The final parcel numbers to be assigned by Warren County to the Parcels constituting the Property are not yet available. In the interests of accurately identifying the Property, the Property is described by metes and bounds in Exhibit A hereto. All references in the Petition to numbers of Parcels to be assessed shall be replaced with the description of the Property included herein.
2. In addition, the Petitioner has determined that upon completion of the Improvements, it will convey ownership of the Improvements to the City. Accordingly, upon the conveyance of any Parcel or subdivision thereof by the Petitioner to the City, the Special Assessments levied on the Parcel so subdivided shall no longer be levied on any new parcel comprised solely of land that is used for the Improvements and shall instead be levied entirely on that Parcel or those new Parcels created from the subdivision of such parcel that does not or do not, as the case may be, consist entirely of property upon which such Improvements shall be constructed. If more than one such Parcel subject to Special Assessments shall result from such subdivision, the Special Assessments shall be divided among the new Parcels.

Except as expressly modified by this Amendment, all of the provisions of the Petition shall remain in full force and effect and be binding in accordance with their terms. The Petitioner hereby re-states, as if set forth fully in this Amendment, each of the waivers contained in the Petition, including, without limitation, the waivers set forth in the Petition.

The Petitioner acknowledges and understands that the City will be relying upon this Amendment in taking actions pursuant thereto. Therefore this Amendment shall be irrevocable and shall be binding upon the Petitioner, any successors or assigns thereof, the Parcels, and any grantees, mortgagees, lessees, or transferees thereof. The Petitioner acknowledges that it has had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified herein. By signing this Amendment, the Petitioner states and agrees that the person signing this Amendment has the full right and authority to sign this Amendment and that no other signatures or approvals are required to give the consent of the Petitioners. The undersigned understands that his statement is made under penalty of perjury.

IN WITNESS WHEREOF, this Petition was executed as of the date set forth below, by the undersigned Petitioner(s), the Owner(s) of the Parcel(s) set forth below.

Date: 10-15-18



(signature of Authorized Signatory)

Property Owner: 17ac East of Senate, LLC
(printed name of Property Owner)

Authorized Signatory: John P. Westheimer
(printed name of Authorized Signatory)

Address for notices to Property Owner: 4779 Red Bank Expressway
Cincinnati, Ohio 45227

Exhibit A

Description of Parcels

[Attached]

EXHIBIT A

Legal Description

17.1254 Acre Parcel

Being a parcel of land situated in, Turtlecreek Township, City of Monroe, Warren County, Ohio; Section 5 and Section 6, Township 3, Range 3 and being part of Lot 4 of Congress Industrial Park as recorded in Plat Book 6, Page 74 as conveyed to 17 Acres East of Senate, LLC by deed recorded in Document Number 2018-001823 (1.5000 acres) and being all of the remainder of the property as conveyed to 17 Acres East of Senate, LLC by deed recorded in O.R. 4309 Page 108 (15.6254 acres Remainder), of the deed records of the Recorders Office of Warren County, Ohio and being located within the following described points in the boundary thereof:

Commencing at the northeast corner of said Lot 4; thence on the east line of said Lot 4 South 6°03'10" West, 929.20 feet to an iron pin with cap set, said point being the northwest corner of said property as conveyed to 17 Acres East of Senate, LLC, in O.R. 4309, Page 108 and the southwest corner of the property conveyed to Daily Terminals, Inc. by deed recorded in O.R. 46, Page 995, and the east line of the property as conveyed to Thomas Kieley Trustee by deed recorded in O.R. 1850, Page 680, said point being the **REAL POINT OF BEGINNING** of the parcel herein described; thence on the common line of said O.R. 4309 Page 108 and O.R. 46, Page 995 South 83°56'48" East, 731.16 feet to a 1/2" iron pipe found on the west line of the property conveyed to HLF Financial, LLC by deed recorded in O.R. 4946, Page 334; thence on the common line of said O.R. 4309 Page 108 and O.R. 4946, Page 334 South 4°33'02" West, 814.02 feet to an iron pin with cap set on the north right of way line of State Route 63 per Plat Book 84, Page 20, 21 and 22; thence on said north line on the following courses: 1) South 79°30'43" West, 132.16 feet to an iron pin with cap set; 2) South 75°46'35" West, 67.44 feet to an iron pin with cap set; 3) South 80°34'46" West, 195.20 feet to an iron pin with cap set; 4) South 85°02'48" West, 195.27 feet to an iron pin with cap set; 5) South 87°57'34" West, 184.59 feet to an iron pin with cap set on the west line said Lot 4 and the west line of

the property as conveyed to D & A Brothers Corp. by deed recorded in O.R. 3751, Page 489; thence on the west line of said Lot 4 and the common line of said O.R. 4309 Page 108 and O.R. 3751, Page 489 North 6°03'10" East, 450.56 feet to an iron pin with cap set at the southeast corner of said Document Number 2018-001823; thence on the common line of said Document Number 2018-001823 and O.R. 3751, Page 489 North 83°56'50" West, 242.00 feet to an iron pin with cap set on the east line of Senate Drive; Thence on the line of said Document Number 2018-001823 and the east line of Senate Drive North 6°03'10" East, 270.00 feet to a 5/8" iron pin found at the southwest corner of said O.R. 1850, Page 680; thence on the common line of said Document Number 2018-001823 and O.R. 1850, Page 680 South 83°56'50" East, 242.00 feet to an iron pin set on the east line of Said Lot 4 and the west of said O.R. 4309, Page 108; thence on the east line of said Lot 4 and on the common line of said O.R. 4309, Page 108 and O.R. 1850, Page 680 North 6°03'10" East, 269.55 feet to the **REAL POINT OF BEGINNING** containing 17.1254 acres more or less and being subject to all easements of record. Of the 17.1254 acres 10.7305 acres are located in Section 5 and 6.3949 acres in Section 6. Also of the 17.1254 acres 15.6254 acres are the remaining acres from O.R. 4309, Page 108 and 1.5000 acres are from Document Number 2018-001823 which is part of Lot 4.

The above description is a result of a survey prepared by Daniel J. Binz of Binz Surveying, LLC, Ohio Registered Surveyor No. 7058 dated March 29, 2018 the survey plat which is filed in Volume Plat No. of the Warren County Engineer's Record of Land Division.

The basis of the bearings for the above described parcel is State of Ohio right of Way plans for WAR-75-10.30/0.00 S.R. 129-90.