

ORDINANCE NO. 72-2022

**TITLE: APPROPRIATION OF TEMPORARY EASEMENT
FOR WOOSTER ROAD/STATE STREET PROJECT (PARCEL 9-T)**

AN ORDINANCE APPROPRIATING A TEMPORARY CONSTRUCTION EASEMENT ON CERTAIN PROPERTY OWNED BY ARCP LS BARBERTON OH, LLC, FOR THE PURPOSE OF MAKING OR REPAIRING ROADS WHICH ARE OPEN TO THE PUBLIC WITHOUT CHARGE, AUTHORIZING THE APPROPRIATION OF FUNDS FOR DEPOSIT WITH THE CLERK OF COURTS, AND AUTHORIZING THE CITY LAW DIRECTOR AND/OR HER DESIGNEE TO FILE A PETITION FOR APPROPRIATION IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, SUMMIT COUNTY, OHIO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Barberton, in cooperation with the Ohio Department of Transportation (“ODOT”), is undertaking a road widening project described as SUM-Wooster Road/State Street Project (the “Project”), and it is necessary for the City to acquire certain property interests necessary to complete the Project; and

WHEREAS, in connection with the Project, it is necessary for the City to acquire a temporary construction easement described as Parcel 9-T, as further described, on Exhibit A attached hereto (the “Temporary Easement”); and

WHEREAS, the City’s appropriations consultant and agent delivered a Notice of Intent to Acquire and Good Faith Offer dated March 29, 2022, (the “Notice and Offer”), declaring the City’s intent to acquire the Property to the owner of such Property (the “Owner”); and

WHEREAS, the Notice and Offer satisfies the City’s requirements pursuant to Sections 163.04 and 163.041 of the Ohio Revised Code to provide written notice of the City’s intent to acquire the Temporary Easement, and to provide the Owner with a written good faith offer to purchase the Temporary Easement at an appraised fair market value at least 30 days prior to filing a petition for appropriation; and

WHEREAS, following the delivery of the Notice and Offer, the City and the Owner were unable to agree on the terms of a conveyance of the Temporary Easement, as required by Ohio Revised Code, Section 163.04; and

WHEREAS, the Project is necessary for (a) making or repairing roads which shall be open to the public in accordance with Section 163.06 of the Ohio Revised Code and (b) the opening, widening, straightening, changing the grade of and extension of Wooster Road / State Street in accordance with Section 719.01(A) of the Ohio Revised Code; and

WHEREAS, this Council has determined to authorize the City to proceed with the appropriation of the Temporary Easement pursuant to Chapter 163 of the Ohio Revised Code and Section 719.05 of the Ohio Revised Code; and

WHEREAS, pursuant to Section 163.06 of the Ohio Revised Code, the City may deposit with the Court at the time of filing the petition to appropriate the value of the Temporary Easement appropriated, as determined by the City, and as stated in the Notice and Offer and thereupon take possession of and enter upon the Property appropriated.

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

SECTION 1. This Council determines it necessary to appropriate the Temporary Easement, identified and described more fully in Exhibit A for the purposes of (a)

making or repairing roads which shall be open to the public in accordance with R.C. 163.06, and (b) the opening, widening, straightening, changing the grade of and extension of a public roadway in accordance with R.C. 719.01(A); and hereby directs the appropriation of the Temporary Easement described in Exhibit A to proceed in accordance with Chapters 163 and 719 of the Ohio Revised Code.

SECTION 2. The City Law Director and/or his designee is hereby directed to file a petition for appropriation in the Summit County Court of Common Pleas – Probate Division in accordance with the procedures set forth in Chapters 163 and 719 of the Ohio Revised Code.

SECTION 3. The Director of Finance is authorized to deposit the value of the Property, as determined in the Notice and Offer, with the Court at the time to appropriation petition is filed to permit the City to immediately obtain possession of the Property in furtherance of the Project.

SECTION 4. All formal actions of this Council related to this ordinance and all deliberations of the Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including section 121.22 of the Ohio Revised Code.

SECTION 5. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this ordinance must be immediately effective to timely proceed with the Project to enhance the flow of vehicular traffic within the City thereby enhancing the safety of pedestrian and vehicular traffic; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor; otherwise, it shall take effect at the earliest time permitted by law.

Passed May 23, 2022

Clerk of Council

President of Council

Approved _____ 2022

Mayor