

Ordinance No. 1093-2023 AS AMENDED

**By Council Members McCormack,
Hairston, Bishop, and Griffin
(by departmental request)**

AN EMERGENCY ORDINANCE

Authorizing the Directors of Public Works and Community Development to enter into one or more lease and/or management agreements with Cleveland Public Market Corporation, an Ohio non-profit corporation, to lease the West Side Market, the West Side Market Parking Lot and the Hicks Parking Lot and to provide professional services to manage, operate, and improve ~~the these~~ the properties and assist with capital improvement fundraising and funding from available tax credits for the improvement of West Side Market; authorizing other agreements; authorizing the Director of Public Works to apply for and accept any gifts, grants or services from any public or private entity; and to amend Sections 131.21, 131.22 and 131.78 and repeal Chapter 553 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, relating to the West Side Market.

WHEREAS, the City of Cleveland (the "City") is the owner of the land and building currently operated as a public market known as the West Side Market ("WSM"), 1979 West 25th Street, including the Market House, the Market Arcade, and the two parking lots adjacent to the Market known as the West Side Market Parking Lot and the Hick's Parking Lot (collectively, the "Market Properties"); and

WHEREAS, the City has invested and committed substantial funds to the WSM and has determined that it is advantageous to retain a private, non-profit organization to manage and operate the Market Properties; and

WHEREAS, the Cleveland Public Market Corporation ("CPMC") was created to lease, operate, and manage the Market Properties and the City believes that CPMC can do so in an efficient manner, while at the same time promoting WSM as a catalyst for economic development, community development, and food access in the Cleveland area; and

WHEREAS, CPMC will pursue opportunities for raising funds to complete capital improvements at the Market Properties and funding from available tax credits; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

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Section 1. That, notwithstanding and as an exception to the provisions of Chapters 181 and 183 of the Codified Ordinances of Cleveland, Ohio, 1976, the Director of Public Works and Director of Community Development are authorized to enter into one or more lease and/or management agreements with CPMC, an Ohio non-profit corporation and an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, to lease the Market Properties and provide professional services to manage, operate and improve the Market Properties for a period up to ten (10) years.

Section 2. That the City may make a \$200,000.00 payment to CPMC at the time of execution of the parties' anticipated agreement and, subject to annual appropriation, may make additional payments to CPMC for WSM operating expenses. Payments made pursuant to the agreement(s) shall be paid from funds approved by the Director of Finance. (RQS 7005, RLA 2023-97)

Section 3. That, notwithstanding and as an exception to the provisions of Chapters 181 and 183 of the Codified Ordinances of Cleveland, Ohio, 1976, that the Director of Public Works and Director of Community Development, as appropriate, are authorized to enter into agreement(s) necessary to secure funding through any available tax credits to benefit the Market Properties. At the termination of the lease and/or management agreement(s) authorized in Section 1, the Director of Public Works and Director of Community Development, when necessary to utilize certain tax credit financing, are authorized to enter into one or more long-term lease or management agreements with CPMC or an entity affiliated with or controlled by CPMC to operate and maintain the Market Properties at fair market value or other valuable consideration. The term of the lease or management agreements and the fair market value shall be determined by the Board of Control.

Section 4. In the event that the Market Properties, in whole or in part, are subject to real property taxes due to the lease and/or management agreement(s) to

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CPMC or an entity affiliated or controlled by CPMC, the Director of Public Works, Director of Community Development, the Director of Law, and/or other appropriate City officials are authorized to request an abatement of real property taxes at the Market Properties and to enter into any agreements and execute any documents and/or certificates necessary for such abatement.

Section 5. That the Director of Public Works, Director of Community Development, the Director of Law, and other appropriate City officials are authorized to enter into any other agreements, execute any other documents and certificates, and take any other actions needed to implement this ordinance.

Section 6. That the Director of Public Works is authorized to apply for and accept any gifts, grants, or services from any public or private entity for the purpose of supporting the Market Properties and CPMC; and that the Director of Public Works is authorized to file all papers and execute all documents necessary to receive any gift or grant funds or services; and that the funds are appropriated for the purposes described in this ordinance.

Section 7. That the following Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 131.21, as amended by Ordinance No. 223-2022, passed March 21, 2022,

Section 131.22, as amended by Ordinance No. 1330-A-10, passed December 6, 2010, and

Section 131.78, as amended by Ordinance No. 817-2023, passed September 18, 2023,

are amended to read as follows:

Section 131.21 Rental of Market Stalls

(a) ~~The~~ If the West Side Market is leased or managed by a third-party operator, then that operator shall assess and collect rent for the use of space at the West Side Market at the operator's discretion. If the West Side Market is operated exclusively by the City, then the Director of Public Works (the "Director") shall assess and collect rent for the use of space at the West Side Market as provided herein. The rent for leases renewed in the year 2022 shall remain the same as the rent charged in 2020, and the rent for a new tenant lease shall be calculated by inserting the new

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tenant into the formula set forth below ("Fee Formula") that was calculated for 2022. Except as otherwise provided and beginning in 2023, the Director shall assess and collect rent on the lesser of a three percent (3%) increase from the rent assessed the previous year or the rent calculated by using the then current Fee Formula. New tenants' rent for the first year of their leases shall be calculated solely on the Fee Formula. The Director shall use the following Fee Formula for rent assessment and collection:

(1) By November 1st of each year, the Director shall prepare and submit for review to the Budget Committee of the Tenant's Association, a schedule of expenses for the ensuing year (the "Director's Schedule"). The Director shall have the discretion to increase the total amount of expenses in the Director's Schedule (the "Schedule Amount") so that the Schedule Amount is not greater than the previous year's Schedule Amount plus ten percent (10%) plus a percentage equal to the percentage increase in wages negotiated by the City with its union employees.

In the event that the Schedule Amount exceeds the amount referred to in the preceding sentence, the excess amount may serve as the basis for the calculations set forth herein only with the prior approval of the Budget Committee, which approval shall not be unreasonably withheld. The decision of the Budget Committee as to any such excess amount shall be made within twenty-five (25) days after submittal of the Director's Schedule to the Budget Committee. If the Budget Committee has failed to act at the expiration of this twenty-five (25) day period, the Schedule Amount shall be deemed approved as submitted.

In the event that the Schedule Amount for the ensuing year is less than the previous year's Schedule Amount, the Schedule Amount which shall serve as the basis for calculation of Rent for the ensuing year shall be the Schedule Amount as submitted for review to the Budget Committee plus thirty percent (30%) of the difference between the previous year's Schedule Amount and the Schedule Amount submitted for review to the Budget Committee for the ensuing year.

(2) By December 1st of each year, the Director shall make available to Tenant the calculation of Rent for the ensuing year, based on the formula set forth herein.

(3) Tenant shall be assigned an occupancy factor which shall be determined by multiplying the total amount of occupied square footage, as evidenced the market Plan, times a location factor times a use factor.

A. The location factor shall be:

1. One and eight-tenths (1.8) for stands located in the Market House; or

2. One and two-tenths (1.2) for stands located outside the Market House.

B. The use factor associated with the designated Use Category as defined in the Market Rates shall be:

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1. Two (2.0) for any stand selling any amount of spirituous liquor, beer, wine, mixed beverages or other intoxicating beverages;
2. One (1.0) for "fast food", "specialty" and "traditional" stands;
3. Five-tenths (0.5) for "grocery" stands; and/or
4. Three-tenths (0.3) for "restaurant" stands.

(4) The occupancy factors for all stands upon the Market Grounds shall be added together. The result of that addition shall be "Total Occupancy Factor." The Total Occupancy Factor shall be multiplied by five percent (5%) to reflect average vacancy rates from year to year. This calculation shall result in the "Vacancy Factor."

(5) The aggregate of all revenue reasonably anticipated in the upcoming year from event rental, leases with terms for less than a year, and storage lockers shall be deducted from the Schedule Amount. The result of this calculation shall be the "Adjusted Schedule Amount."

(6) The Adjusted Schedule Amount shall be multiplied by a fraction, the numerator of which is Tenant's occupancy factor and the denominator of which is the Total Occupancy factor minus the Vacancy Factor. This calculation shall result in the "Annual Rent," which shall then be divided by twelve (12) to determine the Rent due on the first day of each month.

(7) A fee for energy consumption for the outdoor heating system will be assessed to each Tenant of the Arcade. A fee for maintenance and repair services for the refrigerated display cases will be assessed to each Tenant of the Market House. Such payments are deemed part of the rental obligation.

(b) The Director may rent such spaces or parts or grant the right to use the same for a period not to exceed three (3) years. Rent for a lease term of more than one (1) year shall be recalculated in accordance with division (a) of Section 131.21 each year regardless of the lease term. He or she may make such provision for renewal or extension of the rental right or grant as he or she may deem advisable from time to time for additional periods not exceeding three (3) years each, providing that the option or right of renewal shall be exercisable only by the Director and not by the grantee.

(c) The Director may rent such spaces for terms less than one (1) year for the amounts established from time to time by the Board of Control.

(d) The Director is authorized to provide in the renting or granting of rights to the use of such part or space that the rental right or grant shall not be transferred or assigned by the grantee thereof to any other person without the consent, in writing, of the Director. Such right or grant may be revoked by the Director upon conviction of the grantee of violation of law or ordinances relating to weights and measures. Provisions shall be made by the Director for the payment of such rental at such regular times and at such place as may be by him or her deemed most advisable.

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Section 131.22 Manager of West Side Market

The Director of Public Works shall ~~may~~ appoint a Manager of the West Side Market, subject to the provisions of the Charter and the Codified Ordinances of Cleveland, Ohio, 1976, and to the supervision of the Director of Public Works.

Section 131.78 Parking Fees

(a) The Commissioner of Parking Facilities shall cause to be collected fees and charges, which include tax, at the following parking facilities under the following schedule:

(1)	Willard Park Garage:	
	A. First hour or portion thereof	Up to \$5.00
	B. Each additional half hour or portion	Up to \$2.00
	C. Daily maximum rate from 5:00 a.m. to 11:00 p.m.	Up to \$20.00
	D. Additional overnight charge from 11:00 p.m. to 5:00 a.m.	Up to \$20.00
	E. General monthly rate	Up to \$175.00
	F. 1. Special monthly rate for City employees	\$55.00
	2. Special monthly rate for federal, state and county employees	Up to \$200.00
	G. Special events (flat rate)	Up to \$60.00
	H. Charge for lost or stolen key card	\$50.00
	I. Late payment charge	\$5.00
	J. Early Bird Rate (time to be determined by the Director of Public Works)	Up to \$15.00
	K. Special Event flat rate in conjunction with City Hall Rotunda rental (for weekend wedding events only)	Up to \$600.00
(2)	Canal Basin Lot:	
	A. Daily rate from 6:00 a.m. to 6:00 p.m. (flat rate)	Up to \$10.00
	B. Special events, weekdays between 6:00 p.m. and 6:00 a.m., weekends and holidays (flat rate)	Up to \$50.00
(3)	North Coast Municipal Parking Lot:	
	A. Daily rate (flat rate) (cars, SUVs, small trucks)	Up to \$10.00
	B. Daily rate (flat rate) (RVs, buses, oversize trucks, trailers)	Up to \$50.00
	C. City of Cleveland employees	No charge
	D. General monthly rate – non-City of Cleveland employees	Up to \$100.00
	E. Special events (flat rate)	Up to \$50.00
	F. Charge for lost or stolen key card	\$50.00
	G. Late payment fee	\$5.00
	H. Overnight Rate (RVs, buses, oversize trucks, trailers)	\$80.00
	I. Overnight Rate (cars, SUVs, small trucks)	\$30.00
(4)	<u>If the West Side Market is leased or managed by a third-party operator, then that operator shall assess and collect fees for the West Side Market Parking Lot, including the Hicks Lot. If the West Side Market is operated exclusively by the City of Cleveland, then the following rates for the West Side</u>	

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Market Parking Lot, including the Hicks portion Lot, shall apply:	
A. First sixty (60) minutes or portion thereof between 6:00 a.m. to 6:00 p.m.	Free
B. Each additional hour or portion thereof	Up to \$3.00
C. Daily maximum rate. Day concludes at 3:00 a.m.	Up to \$20.00
D. General monthly rate	Up to \$150.00
E. Charge for lost or stolen key card	\$50.00
F. Late payment fee	\$5.00

(b) Wherever the schedule contained in division (a) of this section specifies a maximum fee, the fee to be charged shall be fixed by the Commissioner of Parking Facilities with the consent of the Director of Public Works up to the maximum specified.

(c) Monthly rate customer parking privileges at Willard Park Garage, Canal Basin Lot, and North Coast Municipal Parking Lot do not include entry to these garages and lots for special events held on weekends, holidays or after 5:00 p.m. on weekdays.

(d) Fees collected from the Willard Park Garage, Canal Basin Lot, West Side Market Parking Lot, and North Coast Municipal Parking Lot shall be credited to the Division of Parking Facilities Enterprise Fund for general operations.

(e) If the West Side Market is leased or managed by a third-party operator, then this division shall not apply: After expenses are paid for both the West Side Market Parking Lot and the Hicks Lot, net fees collected from the Hicks Lot shall be credited to the Division of Parking Facilities Enterprise Fund for capital expenses at the West Side Market Parking Lot, market house and arcade.

(f) The Commissioner of Parking Facilities shall fix and collect the fees and charges as the Commissioner shall determine at parking facilities not identified in division (a) of this section but under the Commissioner's control until the Council and the Board of Control fix fee schedules for the parking facilities.

(g) Notwithstanding any provision in this section to the contrary, the Commissioner of Parking Facilities shall:

(1) Designate ten (10) parking spaces in Willard Garage located as close as practical to the entrance to City Hall to be assigned by the Director of Public Works to City employees with the greatest number of years seniority as a City employee; and

(2) Designate a sufficient number of parking spaces located either in the North Mall Lot or in Willard Garage for City employees who are employed to clean City Hall and who begin work at 3:00 p.m. or later and work later than the closing of Willard Garage.

(h) In addition to the schedule contained in division (a) of this section, the Commissioner of Parking Facilities may enter into agreements with the sponsors of events that wish to reserve specific parking spaces in the Willard Park Garage, or the North Coast Municipal Parking Lot that provide for the payment by the sponsor of up to sixty dollars (\$60.00) per parking space.

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Section 8. That the following existing Sections of the Codified Ordinances of Cleveland, Ohio, 1976:

Section 131.21, as amended by Ordinance No. 223-2022, passed March 21, 2022,

Section 131.22, as amended by Ordinance No. 1330-A-10, passed December 6, 2010,

Section 131.78, as amended by Ordinance 817-2023, passed September 18, 2023, and

Section 553.01, West 25th Street Market Grounds, as amended by Ordinance No. 1595-44, passed October 15, 1945, and Sections 553.02, Use of Market Grounds, 553.03, Priority on Space, 553.04, Short Weights or Measures, 553.05, Resisting Commissioner's Order, 553.06, Shelves and Lines, 553.07, Intoxicating Liquors, 553.08, Regulations for Sanitation and Conduct, 553.09, Seizure and Destruction of Unfit Foods, 553.10, Sale of Provisions before Market Hours, 553.11, Clearing Market upon Closing, 553.12, Uniform Stall Signs, and 553.99, Penalty, as enacted by Ordinance No. 63410-A, passed September 22, 1924,

are repealed.

Section 9. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

KR:nl

9-25-2023

FOR: Directors Williams and Hernandez

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REPORT
after second Reading

**By Council Members McCormack, Hairston, Bishop, and Griffin
(by departmental request)**

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Authorizing the Directors of Public Works and Community Development to enter into one or more lease and/or management agreements with Cleveland Public Market Corporation, an Ohio non-profit corporation, to lease the West Side Market, the West Side Market Parking Lot and the Hicks Parking Lot and to provide professional services to manage, operate, and improve the these properties and assist with capital improvement fundraising and funding from available tax credits for the improvement of West Side Market; authorizing other agreements; authorizing the Director of Public Works to apply for and accept any gifts, grants or services from any public or private entity; and to amend Sections 131.21, 131.22 and 131.78 and repeal Chapter 553 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by various ordinances, relating to the West Side Market.

READ FIRST TIME **REPORTS**
and referred to
by the council

CITY CLERK

READ SECOND TIME
by the council

CITY CLERK

READ THIRD TIME
by the council

PRESIDENT

CITY CLERK

APPROVED

MAYOR