

Ordinance No. 335-2021

**By Council Members Polensek, Hairston,
Bishop, Brancatelli and Kelley
(by departmental request)**

AN EMERGENCY ORDINANCE

Authorizing the Mayor to apply to the District One Public Works Integrating Committee and accept funding for the rehabilitation of East 140th Street from St. Clair Avenue to Lakeshore Boulevard; authorizing the Director of Capital Projects (Director) to apply for and accept gifts, grants, and other funding and to enter into one or more professional service contracts; authorizing the Commissioner of Purchases and Supplies to acquire, accept, and record for right-of-way purposes real property and easements; giving consent of the City of Cleveland to the Ohio Director of Transportation for the improvement and authorizing the Director to enter into Local Project Administration Agreements with the State of Ohio; and cause payment to the State of Ohio for the City's share of the improvement.

WHEREAS, under Article VIII, Section 2k of the Ohio Constitution, the State of Ohio is authorized to issue bonds and other obligations of the State for the purpose of financing public infrastructure capital improvements of political subdivisions as designated by law; and

WHEREAS, under Section 164.03 of the Revised Code, the District One Public Works Integrating Committee has been created to evaluate applications for state financing of capital improvement projects of local subdivisions in Cuyahoga County; 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:

Section 1. That the Mayor is authorized to apply to the District One Public Works Integrating Committee for state funding for the following infrastructure capital improvement: East 140th Street from St. Clair Avenue to Lakeshore Boulevard (the "Improvement").

Section 2. That the Mayor is authorized to apply to the District One Public Works Integrating Committee for state funding in the form of a loan or grant, or a combination of both, to obtain credit enhancements and loan assistance in support of the city's bonds issued for bridge and road improvements for the Improvement.

Section 3. That the Mayor is authorized to accept one or more loans or grants from the Ohio Public Works Commission, acting by and through its Director, to finance the Improvement; that the Mayor is authorized to file all papers and execute all documents necessary to receive the funds under the loan or grant; and that the funds are appropriated for the purposes described in this ordinance.

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Section 4. That the Director of Capital Projects is authorized to apply for and accept gifts or grants or other funds from public or private entities; that the Director is authorized to file all papers and execute all documents necessary to receive the funds; and that the funds are appropriated for the purposes of this ordinance.

Section 5. That the City shall provide cash matching funds in the amount of the local share.

Section 6. That, provided the City sells future bonds authorized by Ordinance No. 160-2021, passed March 22, 2021, the Director of Capital Projects is authorized to employ by contract or contracts one or more consultants or one or more firms of consultants for the purpose of supplementing the regularly employed staff of the several departments of the City of Cleveland in order to provide professional design, engineering and construction services necessary for the Improvement.

The selection of the consultants for the services shall be made by the Board of Control on the nomination of the Director of Capital Projects from a list of qualified consultants available for employment as may be determined after a full and complete canvass by the Director of Capital Projects for the purpose of compiling a list. The compensation to be paid for the services shall be fixed by the Board of Control. The contract or contracts shall be prepared by the Director of Law, approved by the Director of Capital Projects and certified by the Director of Finance.

Section 7. That the Director of Capital Projects is authorized to accept cash contributions from public or private entities for infrastructure restoration costs associated with relocating, rehabilitating or reconstructing utility infrastructure for the Improvement and costs associated with implementing green infrastructure features to address combined sewer overflows. That the Director of Capital Projects is authorized to enter into agreements with the entities for this purpose.

Section 8. That notwithstanding any provision of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, the Commissioner of Purchases and Supplies is

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authorized to acquire, accept, and record for right-of-way purposes any real property including but not limited to fee simple acquisitions, temporary easements, permanent easements, and work agreements as is necessary to make the Improvement. The consideration to be paid for the property and easements shall not exceed fair market value, as determined by the Board of Control.

Section 9. That the Director of Capital Projects is authorized to execute, on behalf of the City, all documents necessary to acquire, accept, and record the property and easements and to employ and pay all fees for title companies, surveys, escrows, appraisers, and all other costs necessary for the acquisition of the property and easements.

Section 10. That the Mayor or Director of Capital Projects is authorized to file all papers and execute all documents necessary to receive the funds under this ordinance; and that the funds are appropriated for the purposes described in the ordinance.

Section 11. That the Director of Capital Projects is authorized to enter into any agreements needed to implement the Improvement, including but not limited to, multi-party agreements between the City and other governmental entities regarding the funding and construction of the Improvement.

Section 12. That the Director of Capital Projects is authorized to accept cash contributions from the public or private entities, including but not limited to, the Greater Cleveland Regional Transit Authority and the Northeast Ohio Regional Sewer District, for the Improvement. That the Director of Capital Projects is authorized to enter into agreements with the entities for this purpose.

Section 13. That the Director of Capital Projects is authorized to enter into any other agreements needed to implement the Improvement.

Section 14. That the Director of Capital Projects is authorized to enter into one or more Local Project Administration agreements with the Ohio Department of

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Transportation to fund and construct any portion of the Improvement, and to enter into one or more contracts for the expenditures of grants or other funding to implement the Improvement with the lowest and best responsible bidder or engineer.

Section 15. That it is declared to be in the public interest that the consent of the City of Cleveland is given to the Director of Transportation of the State of Ohio (“the State”) to construct the Improvement.

Section 16. That the City proposes to cooperate with the State in the cost of the Improvement by assuming and contributing the entire cost and expense of the Improvement, less the amount of federal funds allocated by the Federal Highway Administration, United States Department of Transportation. The City agrees to assume one hundred percent (100%) of the cost of preliminary engineering, right-of-way and environmental documentation. Also, the City agrees to assume and contribute 100% of the cost of any items included in the construction contract at the request of the City, which are determined by the State not eligible or made necessary by the Improvement. The share of the cost of the City is estimated in the amount of \$1,500,383 for the Improvement, but the estimated amount is to be adjusted in order that the City’s ultimate share of the Improvement shall correspond with the percentages of actual costs when the actual costs are determined. The City further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the City. The City shall contribute its share of the cost of these items in accordance with other sections herein.

Section 17. That the Director of Capital Projects is authorized to enter into one or more agreements with the State necessary to complete the planning and construction of the Improvement, which LPA-ODOT-Let agreements shall contain terms and conditions that the Director of Law determines shall best protect the public interest.

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Section 18. Utilities and Right-of-Way Statement. The City agrees to acquire and/or make available to ODOT, under current State and Federal regulations, all necessary right-of-way required for the Improvement. The City also understands that right-of-way costs include eligible utility costs. The City agrees to be responsible for all utility accommodation, relocation, and reimbursement and agrees that all such accommodations, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

Section 19. Maintenance. Upon completion of the Improvement, and unless otherwise agreed, the City shall: (1) provide adequate maintenance for the Improvement under all applicable state and federal laws, including, but not limited to, 23 USC 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Improvement; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

Section 20. That the Director of Capital Projects is authorized to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Improvement and to enter into contracts with the Director of Transportation necessary to complete the Improvement. Upon the request of ODOT, the Director of Capital Projects is also authorized to assign all rights, title, and interests of the City to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

Section 21. That the City agrees that if Federal Funds are used to pay the cost of any consultant contract, the City shall comply with 23 CFR 172 in the selection of its consultant and the administration of the consultant contract. Further, the City agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The City agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design

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standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Improvement. The City agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

Section 22. That this Council requests the State to proceed with the Improvement.

Section 23. That the Director of Capital Projects is authorized to cause payment to the State of Ohio for the City's share of the Improvement.

Section 24. That the cost of the contracts, payments, property acquisition, agreements, or other expenditures authorized in this ordinance, shall be paid from the fund or funds to which are credited any gift, grant, or other funds received under this ordinance, from cash contributions accepted and appropriated under this ordinance, Fund Nos. 20 SF 568, 20 SF 574, 20 SF 579, 20 SF 586, 20 SF 592, 20 SF 597, from the fund or funds to which are deposited the proceeds from the sale of bonds authorized by Ordinance No. 160-2021, passed March 22, 2021, if the City sells such bonds, and any other funds approved by the Director of Finance, including future bond funds if issued for this purpose. (RQS 0103, RLA 2021-34)

Section 25. 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.

SM:nl
5-10-2021
FOR: Director Spronz

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(by departmental request)

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READ FIRST TIME on MAY 10, 2021
and referred to DIRECTORS of Capital Projects,
City Planning Commission, Finance, Law;
COMMITTEES on Municipal Services and Properties,
Development Planning and Sustainability, Finance

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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Published in the City Record _____

REPORT after second Reading

PASSAGE RECOMMENDED BY
COMMITTEE ON
**MUNICIPAL SERVICES
AND PROPERTIES**

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
**DEVELOPMENT, PLANNING AND
SUSTAINABILITY**

FILED WITH COMMITTEE

PASSAGE RECOMMENDED BY
COMMITTEE ON
FINANCE

FILED WITH COMMITTEE

