

# Ordinance No. 1162-17

**Council Members K. Johnson and Kelley  
(by departmental request)**

## **AN EMERGENCY ORDINANCE**

Authorizing the Mayor to apply to the District One Public Works Integrating Committee for state funding for the rehabilitation of Clark Avenue, East 105<sup>th</sup> Street, East 131<sup>st</sup> Street, Fulton Road, Harvard Avenue and Lorain Avenue; to apply for and accept gifts, grants, and other funding from various entities for the improvements; authorizing the Director of Capital Projects to enter into contracts and agreements to design and construct the improvements and other agreements needed to implement the improvements; authorizing the Commissioner of Purchases and Supplies to acquire, accept, and record for right-of-way purposes real property and easements necessary to make the improvements; giving consent of the City of Cleveland to the Director of Transportation of the State of Ohio for improving Clark Avenue and Lorain Avenue; and cause payment to the State of Ohio for the City's share of the cost of the Clark Avenue and Lorain Avenue 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 improvements (collectively the "Improvements"):

1. Clark Avenue rehabilitation from West 41<sup>st</sup> Street to Quigley Road, PID 104932;
2. East 105<sup>th</sup> Street rehabilitation from East Boulevard to Greenlawn Avenue;
3. East 131<sup>st</sup> Street rehabilitation from Miles Avenue to Union Avenue;
4. Fulton Road reconstruction from Clark Avenue to Lorain Avenue;
5. Harvard Avenue rehabilitation from Lee Road to Evanston; and
6. Lorain Avenue rehabilitation from West 117<sup>th</sup> Street to West 65<sup>th</sup> Street, PID 89248.

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

Section 3. That the Mayor is authorized to accept one or more grants from the Ohio Public Works Commission, acting by and through its Director, to finance the Improvements;

# Ordinance No. 1162-17

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that the Mayor is authorized to file all papers and execute all documents necessary to receive the funds under the grant; and that the funds are appropriated for the purposes described in this ordinance.

Section 4. That the Director of Capital Projects is authorized to apply for and accept gifts or grants or other funding from public or private entities, including but not limited to NOACA, 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, provided the City sells future bonds authorized for the purposes of this ordinance, the City of Cleveland is obligated to provide cash matching funds in the amount of the local share.

Section 6. That, provided the City sells future bonds authorized for the purposes of this ordinance, 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 Improvements.

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, under Section 167 of the Charter of the City of Cleveland, this Council determines to make the public improvement as described in this ordinance, for the Office of Capital Projects, by one or more contracts duly let to the lowest responsible bidder or bidders after competitive bidding on a unit basis for the Improvements.

Section 8. That, provided the City sells future bonds authorized for the purposes of this ordinance, the Director of Capital Projects is authorized to enter into one or more contracts

# Ordinance No. 1162-17

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for the making of the Improvements with the lowest responsible bidder or bidders after competitive bidding on a unit basis for the Improvements, provided, however, that each separate trade and each distinct component part of the Improvements may be treated as a separate improvement, and each, or any combination, of the trades or components may be the subject of a separate contract on a unit basis.

Section 9. 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 Improvements 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 10. That, when appropriate, the Director of Capital Projects is authorized to enter into one or more contracts with railroads, the Greater Cleveland Regional Transit Authority, the Northeast Ohio Regional Sewer District and other entities to obtain services or to acquire property rights such as easements and licenses, necessary to construct the Improvement described in this ordinance.

Section 11. That the Director of Capital Projects is authorized to enter into one or more agreements with utility companies to pay charges for the installation of underground lines in connection with the Improvements.

Section 12. That notwithstanding any provision of the Codified Ordinances of Cleveland, Ohio, 1976, to the contrary, the Commissioner of Purchases and Supplies is authorized to acquire, accept, and record for right-of-way purposes any real property and easements necessary to make the Improvements. The consideration to be paid for the property and easements shall not exceed fair market value to be determined by the Board of Control.

Section 13. 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.

# Ordinance No. 1162-17

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Section 14. That the Director of Capital Projects is authorized to enter into any agreements needed to implement the Improvements, including but not limited to, multi-party agreements between the City and other governmental entities regarding the funding and construction of the Improvements.

Section 15. That the Director of Capital Projects is authorized to enter into one or more Local Project Administration agreements with the Ohio Department of Transportation to fund and construct any portion of the Improvements contained in this ordinance, and to enter into one or more contracts for the expenditures of grants or other funding to implement this ordinance with the lowest and best responsible bidder or engineer.

Section 16. 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 following improvement under plans, specifications, and estimates approved by the State: rehabilitation Clark Avenue from West 41<sup>st</sup> Street to Quigley Road, PID No. 104932 (the "Clark Improvement") and repair and resurfacing of Lorain Avenue from West 117<sup>th</sup> Street to West 65<sup>th</sup> Street, PID 89248 (the "Lorain Improvement").

Section 17. 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 Clark Improvement and Lorain Improvement. The share of the cost of the City is estimated in the amount of \$2,693,982 for the Clark Improvement and \$851,630 for the Lorain Improvement, but the estimated amount is to be adjusted in order that the City's ultimate share of the Improvements shall correspond with the percentages of actual costs when the actual costs are determined.

Section 18. 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

# Ordinance No. 1162-17

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Clark and Lorain Improvements, which LPA-ODOT-Let agreements shall contain terms and conditions that the Director of Law determines shall best protect the public interest.

Section 19. 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 Clark and Lorain Improvements. 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 20. Maintenance. Upon completion of the Clark and Lorain Improvements, 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 21. That the Director of Capital Projects is authorized to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Clark and Lorain Improvements and to enter into contracts with the Director of Transportation necessary to complete the above described project. 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 22. 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 standards and that the consultant shall be

# Ordinance No. 1162-17

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responsible for ongoing consultant involvement during the construction phase of the Clark and Lorain Improvements. 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 23. That this Council requests the State to proceed with the Clark and Lorain Improvements.

Section 24. That the cost of the contracts, payments, property acquisition, agreements, cash matches, payment to the State for the City's share of the cost of the Clark Avenue rehabilitation and Lorain Avenue rehabilitation, and other expenditures authorized 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 520, 20 SF 528, 20 SF 534, 20 SF 540, 20 SF 546, 20 SF 554, 20 SF 563, 20 SF 568, 20 SF 574, 20 SF 579 and any all funds approved by the Director of Finance, including future bond funds if issued for this purpose.

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.

RC:nl  
9-25-17

FOR: Director Spronz

**Ord. No. 1162-17**

**REPORT  
after second Reading**

**Council Members K. Johnson and Kelley (by departmental request)**

**AN EMERGENCY ORDINANCE**

Authorizing the Mayor to apply to the District One Public Works Integrating Committee for state funding for the rehabilitation of Clark Avenue, East 105<sup>th</sup> Street, East 131<sup>st</sup> Street, Fulton Road, Harvard Avenue and Lorain Avenue; to apply for and accept gifts, grants, and other funding from various entities for the improvements; authorizing the Director of Capital Projects to enter into contracts and agreements to design and construct the improvements and other agreements needed to implement the improvements; authorizing the Commissioner of Purchases and Supplies to acquire, accept, and record for right-of-way purposes real property and easements necessary to make the improvements; giving consent of the City of Cleveland to the Director of Transportation of the State of Ohio for improving Clark Avenue and Lorain Avenue; and cause payment to the State of Ohio for the City's share of the cost of the Clark Avenue and Lorain Avenue improvement.

**READ FIRST TIME on SEPTEMBER 25, 2017**

**REPORTS**

**and referred to DIRECTORS of Capital Projects,  
City Planning Commission, Finance, Law;  
COMMITTEES on Municipal Services and Properties, Finance**

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**CITY CLERK**

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**READ SECOND TIME**

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**READ THIRD TIME**

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**PRESIDENT**

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**CITY CLERK**

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**APPROVED**

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**MAYOR**

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

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**PASSAGE RECOMMENDED BY  
COMMITTEE ON  
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