

Ordinance No. 223-2022

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

AN EMERGENCY ORDINANCE

To amend Section 131.21 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 1330-A-10, passed December 6, 2010, relating to the rental of market stalls; and to repeal Section 553.07, Intoxicating Liquors, as enacted by Ordinance No. 63410-A, passed September 22, 1924.

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 Section 131.21 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 1330-A-10, passed December 6, 2010, is amended to read as follows:

Section 131.21 Rental of Market Stalls

~~(a) The Director of Public Works shall assess and collect rent for the use of space at the West Side Market using the following fee formula which shall be reviewed every six (6) months by the Director and the United West Side Market Tenant's Association Budget Committee, with notice going to the Chairperson of the Public Parks, Recreation and Property Committee and the Councilmember representing the ward containing the West Side Market of the date, time, and location of each meeting:~~

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 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.

Ordinance No. 223-2022

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:

1. ~~One and six tenths (1.6) for "fast food" or "specialty" stands;~~ 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 to be derived under the ensuing year from rental or 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

Ordinance No. 223-2022

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 ~~(1) year~~ 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 ~~one (1) year each, upon notification to Council,~~ 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.

Section 2. That existing Section 131.21 of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 1330-A-10, passed December 6, 2010, is repealed.

Section 3. That existing Section 553.07, Intoxicating Liquors, of the Codified Ordinances of Cleveland, Ohio, 1976, as enacted by Ordinance No. 63410-A, passed September 22, 1924, is repealed.

Section 4. 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
2-28-2022
FOR: Interim Director Cox

Ord. No. 223-2022

REPORT
after second Reading

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READ FIRST TIME on FEBRUARY 28, 2022

REPORTS

and referred to DIRECTORS of Public Works, Finance, Law;
COMMITTEES on Municipal Services and Properties,
Finance Diversity Equity and Inclusion

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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