

# BEREA CITY COUNCIL

City of Berea, Ohio

## ORDINANCE NO. 2023-32

By: Councilwoman Mary K. Brown; Sponsor: Mayor Cyril M. Kleem, Council President Jim Maxwell  
Council Members: Brown, Coble

### AN ORDINANCE

**OBJECTING TO THE ANNEXATION OF 72.5520 ACRES OF LAND TO THE CITY OF BEREA, ADDRESSING THE NON-PROVISION OF SERVICES TO THE PROPOSED TERRITORY TO BE ANNEXED, ADDRESSING THE ISSUE OF INCOMPATIBILITY OF USES OF THE PROPOSED TERRITORY TO BE ANNEXED UNDER THE CITY OF BEREA AND OLMSTED TOWNSHIP ZONING REGULATIONS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, on or about June 16, 2023, Joseph P. Hollo and Suzanne C. Hollo filed a Petition for Annexation, Expedited Type 2, Petition (the "Petition"), with the Clerk of Cuyahoga County Council requesting annexation of Cuyahoga County Permanent Parcel Number 261-20-003, consisting of 72.5520 acres of real property located in Olmsted Township, Cuyahoga County, to the City of Berea, a copy of the Petition having also been filed with the Clerk of this Council on June 16, 2023;

**WHEREAS**, Ohio Revised Code Section 709.023(C) requires this Council, within twenty (20) days after the date a petition for annexation is filed with the County, to adopt an ordinance or resolution stating what services the municipal corporation will provide, and an approximate date by which it will provide them, to the territory proposed for annexation, upon the annexation;

**WHEREAS**, the City does not agree to provide any services to the territory proposed for annexation to the City set forth in the Petition;

**WHEREAS**, if the territory proposed for annexation is subject to zoning regulations adopted under Chapter 303 or 519 of the Ohio Revised Code at the time the petition is filed, Ohio Revised Code Section 709.023(C) requires this Council to adopt an ordinance or resolution stating that: "If the territory is annexed and becomes subject to zoning by the municipal corporation and that municipal zoning permits uses in the annexed territory that the municipal corporation determines are clearly incompatible with the uses permitted under current county or township zoning regulations in the adjacent land remaining within the township from which the territory was annexed, the legislative authority of the municipal corporation will require, in the zoning ordinance permitting the incompatible uses, the owner of the annexed territory to provide a buffer separating the use of the annexed territory and the adjacent land remaining within the township";

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**WHEREAS**, the Petition does not provide sufficient information for this Council to determine whether the City's Zoning Code permits uses in the territory proposed to be annexed that are clearly incompatible with the uses under the current Olmsted Township zoning regulations in the adjacent land remaining within Olmsted Township from which the territory will be annexed;

**WHEREAS**, Ohio Revised Code Section 709.023(C) requires the Clerk of City Council to file the ordinances or resolutions adopted under Section 709.023(C) with the Clerk of the Cuyahoga County Council and the Cuyahoga County Executive within twenty (20) days following the date the Petition is filed with the County;

**WHEREAS**, Ohio Revised Code Section 709.023(D) provides that, within twenty-five (25) days after the date that a petition for annexation is filed with the County, this Council may adopt and file with the Clerk of Cuyahoga County Council and the Cuyahoga County Executive an ordinance or resolution consenting or objecting to the proposed annexation;

**WHEREAS**, an objection to the proposed annexation under Section 709.023(D) of the Ohio Revised Code shall be based solely upon a petition's failure to meet the conditions specified in Section 709.023(E);

**WHEREAS**, Section 709.023(E)(6) of the Ohio Revised Code requires that the municipal corporation to which annexation is proposed has agreed to provide to the territory proposed for annexation the services specified in the relevant ordinance or resolution adopted under Section 709.023(C);

**WHEREAS**, the City of Berea has not agreed to provide the territory proposed for annexation with any services;

**WHEREAS**, if a street or highway will be divided or segmented by the boundary line between the township and the municipal corporation as to create "a road maintenance problem," Section 709.023(E)(7) of the Ohio Revised Code requires the municipal corporation to agree as a condition of the annexation to assume the maintenance of that street or highway or to otherwise correct the problem;

**WHEREAS**, the City of Berea does not agree to assume maintenance of any portion of any such street or highway;

**WHEREAS**, therefore, this Council objects to the Petition and the requested annexation of Cuyahoga County Permanent Parcel Number 261-20-003, consisting of 72.5520 acres of real property located in Olmsted Township, Cuyahoga County, to the City of Berea, Cuyahoga County.

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**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**Section 1.** That the City of Berea, by and through its Council, pursuant to Section 709.023(C), states that it does not agree to provide any services to Cuyahoga County Permanent Parcel Number 261-20-003 consisting of 72.5520 acres of real property located in Olmsted Township, Cuyahoga County, that is proposed to be annexed to the City of Berea.

**Section 2.** That the City of Berea, by and through its Council, states that based on the Petition, it cannot determine whether the City's Zoning Code allows uses in the territory proposed to be annexed that are *clearly* incompatible with the uses under the current Olmsted Township zoning regulations in the adjacent land remaining within the Township from which the territory is to be annexed.

**Section 3.** That the City of Berea objects to the proposed annexation of Cuyahoga County Permanent Parcel Number 261-20-003, consisting of 72.5520 acres of real property located in Olmsted Township, Cuyahoga County, to the City of Berea because, pursuant to Sections 709.023(D) and 709.023(E)(6) and (7) of the Ohio Revised Code, this Council does not agree to provide any services to the territory proposed for annexation and does not agree to assume maintenance of any portion of any street or highway that will be divided or segmented by the boundary line between Olmsted Township and the City of Berea which will create "a road maintenance problem and does not agree to correct the problem;

**Section 4.** That the Clerk of Council of the City of Berea is hereby authorized and directed to forward a certified copy of this Ordinance immediately upon its passage and approval by the Mayor to the Clerk of the Cuyahoga County Council, the Cuyahoga County Executive, and to the agent for the petitioners as shown in the Petition.

**Section 5.** That this Council urges the Cuyahoga County Council and the Cuyahoga County Executive to undertake a careful and deliberate study of all the matters present in the Petition for Annexation and for the reasons set forth in this Ordinance, to reject the requested annexation.

**Section 6.** That this Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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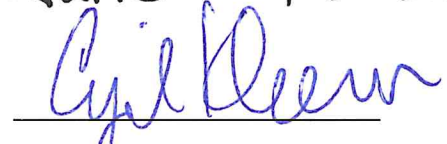
**Section 7.** That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, and for the further reason that the law requires a response to be submitted to the Cuyahoga County Council within twenty (20) and twenty-five (25) days after the filing of the Petition for Annexation, as set forth above. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: June 26, 2023

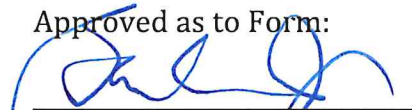
ATTEST:   
Clerk of Council

  
President of Council

APPROVED: June 26, 2023

  
Mayor

Approved as to Form:

  
Director of Law