

# COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-16

By Nick Haschka Sponsored By Mayor Cyril M. Kleem  
Council President Mary K. Brown  
AN ORDINANCE Council Members Cherry A. Banaszak,  
Bill DeVore, Nick Haschka, Margaret S. Key,  
Pick Stuckey,  
OBJECTING TO THE ANNEXATION OF 72.5220 ACRES OF LAND TO THE CITY OF BREA,  
PURSUANT TO OHIO REVISED CODE SECTION 709.023, AND DECLARING AN EMERGENCY.

**WHEREAS**, on or about February 28, 2019, Joseph P. 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 72.522 acres of real property located in Olmsted Township, Cuyahoga County, to the City of Berea, a copy of the petition having been filed with the Clerk of this Council on February 28, 2019; and

**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; and

**WHEREAS**, the City has not agreed to provide any services to the territory proposed for annexation to the City set forth in the Petition; and

**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"; and

**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 county or township zoning regulations in the adjacent land remaining within the township from which the territory will be annexed; and

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

**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; and

**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); and

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By Haschka Sponsored By Mayor Kleem; Council President Brown  
Council Members: Banaszak, DeVito, Haschka,  
Yer, Stucker

**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(D); and

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

**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; and

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

**WHEREAS**, in addition to the reasons set forth above, the City of Berea opposes the proposed annexation for the further reason that the City has not received a development plan or other description of the contemplated future use of the land requesting to be annexed to the City which will be necessary to determine whether the City can or will provide all necessary services to the land proposed to be annexed; and

**WHEREAS**, this Council therefore objects to the Petition and the requested annexation of Cuyahoga County Permanent Parcel Number 261-20-003, consisting of 72.522 acres of real property located in Olmsted Township, Cuyahoga County, to the City of Berea.

**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 has not agreed to provide any services to Cuyahoga County Permanent Parcel Number 261-20-003 consisting of 72.522 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 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 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 72.522 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) of the Ohio Revised Code, this Council has not agreed to provide any services to the territory proposed for annexation.

**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

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Ordinance No. 2019-16

By Harschka

Sponsored By Mayor Kleen; Council President Brown  
Council Members: Banaszak, DeVito, Harschka,  
For, Koczen  
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 in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

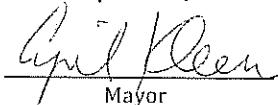
**Section 7.** That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of municipal departments, and for the further reason that the law requires a response to be submitted to the Cuyahoga County Council within twenty (20) to twenty-five (25) days after the filing of the Petition for Annexation. 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: March 11, 2019

  
President of Council

ATTEST: John E  
Clerk of Council

APPROVED: March 12, 2019

  
Mayor

Approved as to Form:

  
Director of Law