

ORDINANCE NO. 2021-39

Introduced by Joe Dike

AN ORDINANCE GRANTING APPROVAL OF A PETITION TO VACATE A PORTION OF SAWMILL PARKWAY CONSISTING OF APPROXIMATELY .04225 ACRES IMMEDIATELY ADJACENT TO PPN: 42-02021.000 AND DECLARING AN EMERGENCY.

WHEREAS, on June 17, 2021, Ardagh Metal Beverage USA Inc. ("Ardagh") filed an "Alley/Street Vacation Petition" ("Petition") requesting that approximately 400 feet of the southeastern most section of Sawmill Parkway immediately adjacent to PPN: 42-02021.000 be vacated to Ardagh in accordance with Section 723.04 of the Ohio Revised Code.

WHEREAS, on August 24, 2021, the Council of the City of Huron ("Council") considered the Petition and by affirmative vote, referred the Petition to the Planning Commission for review and recommendation; and

WHEREAS, on August 24, 2021, the Council passed a Motion to set a public hearing on Tuesday, September 28, 2021 at 6:30 p.m. for public input and discussion about the Petition; and

WHEREAS, on August 24, 2021, the City passed Resolution 53-2021 authorizing the City Manager to enter into a Conditional Vacation Agreement with Ardagh pursuant to the Petition by Ardagh to the City for such agreement; and

WHEREAS, on August 25, 2021, pursuant to the referral from Council, the Planning Commission reviewed the Petition, determined that the requested vacation was consistent with the City's plan to construct a cul-de-sac on Sawmill Parkway, determined that granting the Petition was in the City's best interest, and approved a motion to recommend to the Council that the Petition be approved; and

WHEREAS, on August 25, 2021, pursuant to Resolution 53-2021, the City Manager signed the Conditional Vacation Agreement ("Agreement") to vacate a portion of the Sawmill Parkway right-of-way within the City and immediately adjacent to PPN: 42-02021.000; and

WHEREAS, on September 28, 2021, the Council held a hearing on the Petition and received no opposition to its approval; and

WHEREAS, on November 5, 2021, Ardagh executed the Agreement with the City for the Council agreeing that the Agreement was conditioned upon the City determining that good cause existed for granting the Petition, that granting such Petition would not be detrimental to the general public interest, and passing an Ordinance permitting the vacation as requested;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

Section 1: That Council hereby finds that good cause exists to grant the Petition, as requested by Ardagh and set forth on Exhibit 1, as there is no viable continuing municipal purpose to be furthered by continuing ownership of the to-be-vacated portion of real estate and, the City will benefit from the terms of the Agreement whereby the City will receive parcels

from Ardagh that will be dedicated to public use to better serve the health, safety, and public welfare on and along Sawmill Parkway.


Section 2: That Council further finds that granting the Petition and authorizing the vacation of the approximately 0.4225 acres as shown as Parcel C on the Sawmill Parkway Right of Way Dedication and Vacation Plat and in accordance with the Conditional Vacation Agreement attached Exhibit 2 would not be detrimental to the general public interest.

Section 3: That Council further finds that granting the Petition would further a legitimate public interest and allow the City to construct a cul-de-sac on Sawmill Parkway in accordance with its Master Plan.

Section 4: That Council does, hereby, formally grant the Petition to vacate a portion of Sawmill Parkway consisting of approximately 0.4225 acres immediately adjacent to PPN: 42-02021.000 in accordance with the Conditional Vacation Agreement attached hereto at Exhibit 2.

Section 5: That it is found and determined that all formal actions of this Council concerning and relating to the passage 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 6: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare and for the further reason that, in order to effectively address and manage further proposed development within the municipality, it is imperative this Ordinance be effective immediately; WHEREFORE, this Ordinance shall be in full force and effect from and immediately after its adoption in accordance with the provisions of this Ordinance



Sam Artino, Mayor

ATTEST: 

Clerk of Council

ADOPTED: 23 NOV 2021

SITUATED IN THE STATE OF OHIO, COUNTY OF ERIE, CITY OF HURON, AND KNOWN AS BEING A PART OF
LOT 32 OF SECTION 2, HURON TOWNSHIP.



CONDITIONAL VACATION AGREEMENT

(Sawmill Parkway, Huron, Ohio)

THIS CONDITIONAL VACATION AGREEMENT (this "Agreement"), made and entered into, by and among **The City of Huron, Ohio**, an Ohio municipal corporation (herein called "City"), and **Ardagh Metal Beverage USA Inc.**, a Delaware corporation (which with its successors and assigns is herein called "Ardagh"), is to EVIDENCE THAT:

RECITALS:

WHEREAS Sawmill Parkway become a dedicated road in the City pursuant to a certain plat for the Sawmill Park Subdivision No. 1 dated September 8, 1975 and recorded with the Erie County Recorder's Office on May 20, 1975 as Volume 22, Pages 31 of the Plat Records of Erie County (the "Original Plat");

WHEREAS the Ardagh has executed a Petition ("Petition") in accordance with Ohio Revised Code §723.04, et. seq. requesting that the City vacate a portion of Sawmill Parkway right-of-way in the City (adjacent to Erie County Permanent Parcel Number 42-02021.000) containing approximately 0.4225 acres and as shown as "Parcel C" on the Sawmill Parkway Right of Way Dedication and Vacation Plat attached hereto as Exhibit A and incorporated herein by reference (herein called "Parcel C");

WHEREAS Ardagh owns the fee simple interest the property known as Permanent Parcel Number 42-02021.000 adjacent to "Parcel C";

WHEREAS, the City of Huron owns the fee simple interest in "Parcel C";

WHEREAS, the parties desire to enter into this Agreement, which conditions any proposed vacation on the approval of the City in accordance with the Ohio Revised Code as set forth Section 6S hereof.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals/Defined Terms.** The RECITALS set forth above are expressly incorporated into, and made a part of, this Agreement as if fully rewritten herein.

2. **Proposed Vacation.** The proposed vacation of Parcel C, is shown as "Parcel C" on the Sawmill Parkway Right of Way Dedication and Vacation Plat attached hereto as Exhibit A and incorporated herein by reference as may be approved by the City and Erie County.

3. **Material Terms.** Subject to the terms and conditions of Section 6 of this Agreement, the parties hereto agree as follows:

- (a) Ardagh acknowledges and agrees that, pursuant to §1121.05(f) of the Codified Ordinances of the City ("Ordinances"), that the current zoning district adjoining the sides of Sawmill Parkway shall be extended automatically, to include the right of way that vacated, and such lands shall be subject to our regulations of the extended district or districts.

- (b) Ardagh acknowledges and agrees that to the extent the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any railroad or public utility, whether owned privately or by any governmental authority, located on, over, or under the portion of lands affected by such vacation, is not required for purposes of the City, any affected public utility shall be deemed to have a permanent easement in such vacated portion or excess portion of such street, alley, or highway for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities.
- (c) Ardagh expressly stipulates to the vacated lands shall pass to Ardagh exclusively, whom is the owner of the fee simply interests of lands adjacent and contiguous to Parcel C. Subject to the provisions of Section 6 hereof, upon vacation of the relevant lands by the City, Ardagh shall be vested with a fee simple interest in the width of the strip of land which formerly comprise the dedicated road subject, however, to those rights that other owners may have in the alley as a necessary means of access to their properties (if any).
- (d) Ardagh acknowledges and agrees that this Agreement shall serve as its written consent to such proposed vacation pursuant to Ohio Revised Code §723.06 (such that published notice of same shall not be required pursuant to Ohio Revised Code §723.07).
- (e) To the extent the City elects to approve the proposed vacation (subject to the provisions of Section 6 hereof), the vacation of Parcel C, which has been dedicated to public use, shall, to the extent to which it is vacated, operate as a revocation of the acceptance thereof by the City, but the right of way and easement therein of any lot owner shall not be impaired by such City action.
- (f) The costs associated with all engineering and surveying, and preparation of all schematics, drawings, lot split and consolidation plat(s), and the Sawmill Parkway Right of Way Dedication and Vacation Plat shall be borne by the City.
- (g) The costs associated with all title work, including title searches and Commitment fees, costs of title premiums, conveyance fees (if any), and recordation costs shall be borne by the City.
- (h) Ardagh acknowledge and agree that they will be accepting the lands status post-vacation in their current **"AS IS, WHERE IS, WITH ALL FAULTS"** condition without any oral, written, express, or implied representations, warranties or guarantees by the City as to the quality or physical or environmental condition of the land(s) being vacated. But for the inclusion of the provisions of this Section 3(h), the City would not have entered into this Agreement. The provisions of this Section 3(h) shall survive consummation of this Agreement.
- (i) Ardagh acknowledges and agrees that no remuneration or other financial consideration is being paid by any party to the Agreement to or from any other party to same, and no additional consideration is required of any party hereto other than the mutual promises being made herein (the sufficiency of which is acknowledged by all parties hereto).
- (j) The City shall determine what public utilities, public infrastructure, and physical improvements require modification, removal, elimination, or other attention, if any, and whether one or more easements, conditions or reservations are to be reserved for by the City for public purposes. The City, at its sole cost and expense, shall bear all costs associated with

infrastructure changes and preparation of one or more easements, conditions or reservations that may be required by the City.

(k) The City Planning Commission shall be consulted on the proposed vacation of Parcel C.

4. Duration. This Agreement shall “run with the land” and the rights granted herein shall continue in full force and effect in perpetuity for all purposes not inconsistent with the purposes of this Agreement.

5. Cost of Modification to Improvements. The cost of any maintenance, repair and/or replacement of the physical, non-natural improvements to the lands to be vacated, and/or modification, removal, elimination, or other attention to any and all non-natural improvements thereon or to be constructed thereon, as determined by the City in the City’s sole and absolute discretion, shall be at City’s sole cost and expense.

6. Assignment. No party may assign its rights under this Agreement to any other person or party without the consent of all other parties.

7. Conditions Precedent. This Agreement, and the obligation(s) and performance of the parties relating to the proposed vacation as requested by Ardagh, is expressly conditioned upon:

- (a) the Council of the City determining, after public hearing and after determining there is good cause for such vacation, and that the proposed vacation will not be detrimental to the general interest, if at all, in accordance with Ohio Revised Code §723.04. For avoidance of doubt, in the event the City determines after public hearing that there is insufficient good cause to permit the vacation, or if the City determines that the proposed vacation will be detrimental to the general interest, and thereby fails to pass an Ordinance permitting the vacation, then this Agreement shall automatically terminate and be of no further force or effect whatsoever;
- (b) the City Engineering inspecting Parcel C to determine what public utilities, public infrastructure, and physical improvements require modification, removal, elimination, or other attention, if any, and whether one or more easements, conditions or reservations are to be reserved for by the City for public purposes, and the City being amenable to infrastructure changes, if any, both substantively and the estimated and actual costs relating to same;
- (c) the City determining, by and through a title company of the City’s choosing, that the vacated lands may will qualify for title insurance (if later elected by Ardagh) and that Parcel C may be insured post-vacation; and
- (d) that, upon completion of the vacation by Ordinance and after public hearing as required by Ohio law, the original Ordinance shall be recorded in the official records of the Erie County Recorder.

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8. Miscellaneous. The City, on behalf of itself and its successors and assigns, represents, covenants and warrants that the title of the lands to be vacated are held by the City in fee simple except for taxes and assessments which are a lien but not yet due and payable, zoning restrictions and easements and restrictions of record which do not materially impair any rights granted under this Agreement or materially restrict the exercise of any rights hereunder. This Agreement and the easements (if any) and rights granted hereunder are and shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns and the same shall run with the land.

IN WITNESS WHEREOF, City and Ardagh have hereunto set their hands to this Agreement to be effective as of the date set forth below.

The City of Huron, Ohio

By: 

Printed Name: Matthew Lasko

Title: City Manager

Date: 8-25-2021

"City"

Ardagh Metal Beverage USA Inc.

By: Michael Paxton

Printed Name: Michael Paxton

Title: Snr Project Manager

Date: 11/5/2021

"Ardagh"

EXHIBIT A
(Sawmill Parkway Right of Way Dedication and Vacation Plat)