

Written Testimony of Dan Heryer and Brooke Salvaggio – owners 5500 Bennington Ave regarding Ordinance 240599 – Opposing Vacation of Right of Way (Fremont Ave/E 55th Terr)

We are writing to voice strong opposition to vacation of the Fremont Avenue right-of-way by which we have accessed our home, our farm, and the developed portions of our property for the past 14 years. Since it is the only currently developed meaningful access, vacating this right of way would not only impact our family's access to the house we built with our own two hands, it would immediately cut off access to continue running our farm and composting businesses and take away our ability to provide for our two sons. I can think of no more unreasonable injury to private rights than this. There is no other existing, physically feasible, safe access today. The legal criteria Council is required to consider by the City Code are not met, and the council should not approve vacation when it is so clearly against the law.

A small group of citizens promoting the approval of this vacation, including members of City staff, are misinformed about this vacation and the facts surrounding it. Here is a bulleted list of the false narratives, and our factual response:

- **FALSE: Urbavore Farm has alternate access via Bennington Avenue.**
 - TRUE: The developed portions of the property are clustered around the Fremont Avenue ROW. **Today, NO developed access connects Bennington to Urbavore's residence,** storage and parking areas.
- **FALSE: Use of the Fremont ROW only serves Urbavore Farm.**
 - TRUE: The Fremont ROW has been used continuously since the 1960s as access to the residence at 6400 E 55th Terrace. This home has a basement-level garage designed to exit onto Fremont - not 55th Terrace. Furthermore, this ROW is used as a turnaround for the dead end at 55th Terrace, as KCMO has not developed an official cul-de-sac or turnaround.
- **FALSE: Urbavore Farm illegally paved the Fremont ROW with gravel.**
 - TRUE: Historical aerial imagery shows the Fremont ROW has been graveled since the 1960s to access 6400 E 55th Terrace. The gravel extends beyond the garage at 6400, and nearly to the north property now owned by Urbavore.
 - TRUE: In 2018, ALL adjacent property owners agreed to the unofficial improvement of Fremont, as the City of Kansas City was neither improving nor maintaining the ROW in any way.
- **FALSE: Urbavore threatens the health of 55th Terrace residents, and are a nuisance.**
 - TRUE: KCMO Neighborhood Services and MO Dept. of Natural Resources have inspected Urbavore's operations repeatedly, and have found Urbavore in compliance with all environmental laws.

- TRUE: Urbavore's operations do not use chemicals (we are organic farmers), and does not emit or discharge pollutants or toxins. Under the Missouri regulations, our composting operation is limited to accepting food scraps and requires best management practices, including daily cover to avoid nuisances such as pests and odor.
- **Rather than believe unsubstantiated false claims, we are asking you to consider factual information, supported by evidence.**
- **TRUE: Urbavore is implementing the strategies outlined in KCMO's Climate Resiliency and Protection Plan (urban farming and community composting), which seeks to improve quality of life throughout the region. The City has even listed Compost Collective KC as a partner.**
- **TRUE: Urbavore uses the Fremont Avenue ROW daily, and would be immediately and severely injured by its vacation.** This vacation would be an unprecedented attack on private property rights by KCMO, cutting off access to a family's home and businesses.
- **TRUE: Urbavore's Master Plan Development proposal goes before the City Plan Commission on August 7th.**
 - The MPD proposal should be allowed to move forward, as it directly addresses traffic concerns on 55th Terrace by creating a new main access point from Bennington Avenue.
 - The Bennington access is included in Phase 1 of the rezoning plan, *which includes a one-year timeline for implementation.*
- **TRUE: A majority of area residents (including those on 55th Terrace) support Urbavore Farm, it's rezoning, and it's continued operations.** Letters of support from surrounding residents demonstrate this reality, and Urbavore has shown this visually in a map of community support.

City Council's power of vacation is limited and should be used for limited circumstances only. Once a road exists and is relied on, it should not be taken away. Here, a few neighbors have been frustrated by use of this right of way for commercial traffic to our farm, and have petitioned the city to abandon. Put differently, these few neighbors want the City to vacate *because* the ROW is in use - but *use of the ROW* is one of the standards that *prevents* the City from granting a vacation. Despite the unmet legal standards for vacation, we do understand and have heard and acknowledged the traffic concerns. We are working with neighbors and the City in good faith toward a solution to the traffic burden on 55th Terrace. We have spent considerable time, energy, and money pursuing a Master Plan Development that seeks solutions. The MPD will address all neighbor concerns and build a private driveway on our property to divert commercial traffic. But that takes time, and approval and building another access point cannot happen overnight.

Vacating Fremont Avenue provides zero solutions to this complicated problem. Instead, it exacerbates tensions and creates new problems. Customers may continue to pick up produce

from Urbavore, but they will no longer be able to access Urbavore's off-street parking. Thus, Bennington Avenue will be paralyzed during Urbavore's weekly pickup - affecting far more community members. Also, Compost Collective KC is forced into a trap of accessing the Urbavore compost site by way of the completely unpaved access from Bennington, and creating damage to the land that abuts the backyards of 55th Terrace residents. Both businesses have already suffered financially from the current legal struggle, and continued strain threatens their existence entirely. Urbavore's thousands of supporters are acutely aware of this, and will be angered and dissatisfied with the City government if this vacation moves forward.

We have taken Urbavore Urban Farm from an abandoned property and transformed it into an oasis of crop growth, fertile soil, stormwater retention, and a healthy eco-system over the past decade plus of hard work. The farm is our life's work and we are immensely proud of what it has contributed to our city and this neighborhood. We have fed hundreds of Kansas City families fresh, beyond-organic produce from the farm using the nutrient-dense compost generated by thousands of Kansas City families we serve through Compost Collective KC. Our own neighbors - including those who oppose the farm - use our free community composting program constantly. Our pride in both of our businesses and the model of climate-resilience they provide goes beyond monetary value. We have always been considerate stewards of our earth, connected to our community, and we want to continue this work for decades to come. Like most farmers, our expenses are directly tied to our ability to create income week-to-week selling our produce. Cutting off the road immediately takes away our ability to get produce off the farm and generate income to continue operating the farm.

The neighbors protesting this vacation recently took interest in their properties, and are apparently having buyer's remorse about owning property next to an active right-of-way and farm. Vacating this road is unnecessary. **Let us take a path where everyone wins.** Our Master Plan Development is expected to come before the City Plan Commission next week, on August 7th, The MPD has received staff recommendation for approval with conditions, including limiting use of the Fremont Avenue right of way to personal and emergency use. In response to neighbors' requests, we have removed the proposed additional composting from the MPD and added a timeline to build the alternate access within one year of approval. This is a reasonable compromise, especially given the additional financial burden of building a private road. Taking away Fremont Avenue would remove our ability to make the money needed to continue on the MPD path. We urge the members of City Council to set this right and **VOTE NO** on the proposed vacation.