



# Council Communication

Office of the City Manager

<b>Date</b>	January 28, 2008
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<b>Agenda Item No.</b>	22
<b>Roll Call No.</b>	08-
<b>Communication No.</b>	08-038
<b>Submitted by:</b>	Jeb E. Brewer, P.E., City Engineer

## AGENDA HEADING:

Resolution approving termination of lease agreement and release of easement for ingress and egress in a portion of the vacated north/south alley in the vicinity of 309 Court Avenue.

## SYNOPSIS:

Approving termination of lease agreement and release of easement for ingress and egress in a portion of the vacated north/south alley in the vicinity of 309 Court Avenue. The lessee has surrendered the leased premises to the City and this action is required to resolve title issues on lessee's adjoining property.

**FISCAL IMPACT:** Minimal recording fees only.

## ADDITIONAL INFORMATION:

On April 28, 1997, by Roll Call No. 97-1540, the City Council approved a Lease Agreement for Sidewalk Café ("Lease Agreement") between the City of Des Moines as Lessor and Madison Avenue Business Suites, Inc., Randy J. Africano, President, 234 Madison Avenue, Peoria, IL, 61602, ("Lessee") for lease of a portion of the north/south alley in the vicinity of 309 Court Avenue ("Leased Premises") for use as an outdoor restaurant patio.

On June 16, 1997, by Roll Call No. 97-2124, the City Council approved Ordinance No. 13,497 vacating the above-described leased premises in order for said real property to be used by lessee pursuant to the Lease Agreement.

As a condition to granting the Sidewalk Café Lease Agreement, which effectively closed the alley, the City required the lessee to replace the north/south alley access from Court Avenue to the east/west alley that extends east from 4<sup>th</sup> Street. The terms of the Lease Agreement required lessee to grant to the City of Des Moines a temporary Easement for Ingress and Egress ("Easement") across an adjoining lot owned by lessee and located at 315 Court Avenue, with the requirement that the City release the easement upon termination of the Lease Agreement and upon lessee's surrender of the leased premises to the City. This easement was granted to the City by lessee on May 5, 1997, and was recorded in the Office of the Polk County Recorder at Book 7667, Page 643. The easement references the City's agreement to execute and record a release of the easement upon termination or expiration of the lease.

Also pursuant to the terms of the Lease Agreement, the duration of the lease was for an original term of four and one-half (4 ½) years to expire on October 20, 2001, with three options provided for Lessee to renew the lease for additional five (5) year terms upon written notice to the City of Lessee's intent to exercise each respective renewal option. At this time, the lessee has failed to provide written notice to the

City of intent to exercise a second renewal option and instead has surrendered the leased premises to the City and has requested that the City terminate the Lease Agreement and release the easement as required upon termination of the lease.

The City Council needs to formally approve termination of the Lease Agreement to resolve title issues on lessee's property, and also must release the easement and record such release pursuant to the terms of the Lease Agreement and easement document.

**PREVIOUS COUNCIL ACTION(S):**

Date: April 28, 1997

Roll Call Number: [97-1540](#)

Action: On vacation and lease of a portion of the North/South alley right-of-way in the vicinity of 309 Court Avenue, to Madison Avenue Business Suites, Inc., and Court Avenue Brewing Co., 4 1/2 year term with renewal option, annual rental of \$1,076. Moved by Hensley to adopt, subject to amendment removing Court Ave. Brewing as a Tenant in the Lease Agreement.

Date: June 16, 1997

Roll Call Number: [97-2124](#)

Action: Approval of Ordinance No. 13,497, vacating a portion of the North/South alley right-of-way in the vicinity of 309 Court Avenue, more specifically described as all the North/South alley right-of-way lying West of and adjoining the South 97.0 feet of Lot 7, Block 24, Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa, and repealing Ordinance No. 13,468. Moved by Vlassis to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**