

Date June 27, 2011

**HEARING FOR VACATION AND LEASE OF THE ALLEYS ADJOINING 1312 LOCUST STREET
AND 1408 LOCUST STREET TO WESTGATE PARTNERSHIP, L.L.C.**

WHEREAS, on January 10, 2011, by Roll Call No. 11-0033, the City Council received a communication from the City Manager regarding the preliminary terms of agreement with Westgate Partnership, L.L.C., represented by Jack Hatch, officer, for City assistance for the renovation of the building at 1408 Locust Street, and Council further authorized the City Manager to negotiate a development agreement with Westgate Partnership L.L.C. for further consideration by City Council; and

WHEREAS, on May 23, 2011, by Roll Call No. 11-0886, the City Council received a recommendation from the City Plan and Zoning Commission that two segments of the north/south alleys between 13th Street (previously identified as 14th Street) and 15th Street from Locust Street to the east/west alley, hereinafter more fully described, be vacated and leased to Westgate Partnership, L.L.C., subject to reservation of easement for utilities and public access; and

WHEREAS, City staff and Westgate Partnership, L.L.C., have negotiated the terms of a Lease Agreement, on file in the office of the City Clerk, whereby Westgate Partnership, L.L.C. will lease the above-described property from the City until December 31, 2099, for the purpose of utilizing the right-of-way to comply with Fire Code and zoning setback requirements for development of the adjoining properties, in accordance with the following terms: (1) reservation by the City of use and occupancy of the surface area of the right-of-way for public vehicular and pedestrian access throughout the duration of the lease term, including restrictions on building, parking, and obstructions within the leased premises; (2) lump sum upfront payment by lessee of \$2000.00 for lease of the right-of-way, which amount represents the fair market rental rate for the property subject to the afore-mentioned reservation for public access, as determined by the City's Real Estate Division; (3) lessee responsibility for snow and ice removal of the leased premises, and City Public Works responsibility for repair and maintenance of the surface area of the leased premises; (4) termination of lease agreement for default following notice and right to cure, and termination in part or in whole upon destruction or damage to the adjoining buildings; and

WHEREAS, the City and public will not be inconvenienced by the vacation and lease of said property subject to reservation of public and vehicular access; and

WHEREAS, on June 13, 2011, by Roll Call No. 11-0988, it was duly resolved by the City Council that the proposed vacation and lease of such right-of-way be set down for hearing on June 27, 2011, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and lease public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and lease, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

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NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and lease of public right-of-way, as described below, are hereby overruled and the hearing is closed.
2. The public need for the right-of-way proposed to be vacated will be maintained pursuant to the lease terms requiring continued use of the alleys for public pedestrian and vehicular traffic, and the public would not be inconvenienced by reason of the vacation of the north/south alleys between 13th Street (previously identified as 14th Street) and 15th Street from Locust Street to the east/west alley, more specifically described as follows:

ALL THAT PART OF THE 16½ FOOT NORTH-SOUTH ALLEY EXTENDING FROM THE SOUTH RIGHT-OF-WAY LINE OF LOCUST STREET, AS PRESENTLY ESTABLISHED, TO THE EAST-WEST ALLEY SOUTH OF LOCUST STREET, MORE PARTICULARLY DESCRIBED AS: THE EASTERLY 16½ FEET OF LOT 2 OF J.C. SAVERY'S PARK ADDITION, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT PART OF THE 16 FOOT NORTH-SOUTH ALLEY EXTENDING FROM THE SOUTH RIGHT-OF-WAY LINE OF LOCUST STREET, AS PRESENTLY ESTABLISHED, TO THE EAST-WEST ALLEY SOUTH OF LOCUST STREET, MORE PARTICULARLY DESCRIBED AS: THE 16 FOOT ALLEY LYING WESTERLY OF AND ADJOINING THE WESTERLY LINE OF LOT 12 OF ALLEN'S ADDITION TO THE CITY OF DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the sale and lease of such right-of-way to Westgate Partnership LLC for \$2,000 lump-sum upfront payment, in the form of Lease Agreement on file in the office of the City Clerk, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved.
4. The Mayor is authorized and directed to sign the Lease Agreement as identified above, and Memorandum thereto, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the lease consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Memorandum of Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Memorandum of Lease Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, and with the Affidavit from Westgate Partnership LLC, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. The City Clerk is further authorized and directed to forward the original Lease Agreement to the Real Estate Division of the Engineering Department for retention in the City's Land Records.

★ **Roll Call Number**

Agenda Item Number

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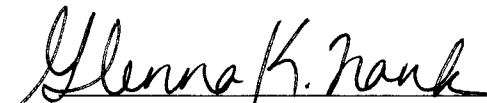
8. The City Manager and/or his designee, the City Real Estate Division Manager, is hereby authorized and directed to administer, monitor, and enforce the terms of the Lease Agreement; to negotiate, approve, and execute documents pertaining to any minor and unsubstantial amendments to the Lease Agreement on behalf of the City, following approval of the City Legal Department as to form and utilizing the City Legal Department for enforcement of the lease terms as needed, and to return major amendments to the City Council for consideration and approval; and, if needed, to approve, proceed with and execute documents pertaining to termination of the Lease Agreement under the provisions for termination as set forth in said Agreement, following approval of the City Legal Department as to form.

9. The proceeds from the lease of this property will be deposited into the following account: 2011-12 Operating Budget, Engineering Department – Real Estate, GE001, ENG040700, Page 83.

(Council Communication No. 11-420)

Moved by _____ to adopt.

APPROVED AS TO FORM:


Glenna K. Frank
Assistant City Attorney

PSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk