

Date July 25, 2011

Page 1

**HEARING FOR VACATION AND CONVEYANCE OF A PORTION OF
GLENDALE CEMETERY TO FRANKLIN FIELD SENIOR APARTMENTS, LLLP
FOR \$172,500**

WHEREAS, in early 2011, Franklin Field Senior Apartments, LLLP submitted a request to the City Manager to purchase a 470.41-feet by 171.52-feet (less a 71'x 56' rectangle) portion of Glendale Cemetery (approximately 1.8 acres) ("Property") for redevelopment as senior apartments; and

WHEREAS, on June 13, 2011, by Roll Call No. 11-1051, the City Council declared by resolution that the Property was excess property, and directed the City Manager to begin negotiations for the vacation and sale of the Property to Franklin Field Senior Apartments, LLLP and any other interested potential buyers; and

WHEREAS, Franklin Field Senior Apartments, LLLP has offered to the City of Des Moines the purchase price of \$172,500 for the Property, which price reflects the appraised price per square foot as determined by an independent appraiser and also reflects the fair market value of the Property as further determined by the City's Real Estate Division; and

WHEREAS, Franklin Field Senior Apartments, LLLP and the City Parks Department and Real Estate Division have negotiated an Offer to Purchase, on file in the office of the City Clerk, which Offer includes, among other terms, the provision that closing on the sale of the Property shall be subject to approval of rezoning of the Property and further subject to Iowa Finance Authority review and approval, and that conveyance of the Property shall be subject to (1) reservation of easement for public utilities including the existing waterline servicing the community gardens, and easement for City and public vehicular and pedestrian use and parking upon the Property; (2) restriction on usage to development of senior housing project as proposed by the buyer; (3) inclusion of the Park and Recreation Board in the site plan process to address concerns regarding proposed usage and its impact on adjacent City land uses and the visual impact from adjacent City land and Franklin Avenue; (4) development of the Property to include a landscaping plan presented to and reviewed by City Parks Department staff and the City's community gardening coordinator to assure that the community gardens in the vicinity of the Property are protected and not negatively impacted, and conformance to the City tree mitigation ordinance and any additional requirements set forth in the City's tree mitigation policy; and (5) buyer's protection of the park shelter, trail, adult exercise equipment and community garden property in the vicinity of the Property during the construction process through the use of siltation fencing and other measures to control runoff and damage from construction equipment and materials; and

WHEREAS, the Property has been declared as excess property by the City Council, and the City will not be inconvenienced by the sale of said parcel; and

WHEREAS, on July 11, 2011, by Roll Call No. 11-1196, it was duly resolved by the City Council that the proposed vacation and conveyance of such excess property be set down for hearing on July 25, 2011, at 5:00 p.m., in the Council Chamber; and

WHEREAS, due notice of said proposal to vacate and convey the Property was given as provided by law, setting forth the time and place for hearing on said proposal; and

Date July 25, 2011

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

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 conveyance of the Property, as described below, are hereby overruled and the hearing is closed.

2. There is no public need for the real property proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a portion of Glendale Cemetery, more specifically described as follows:

A tract of land in the SE ¼ of the NW Fractional ¼ of Section 31, Township 79 North, Range 24 West, of the 5th P.M., in the City of Des Moines, Polk County, Iowa; Beginning at the Northeast Corner of Lot H in Mesa Park, an Official Plat; thence South 90° (degrees) 00' (minutes) 00" (seconds) East, parallel to the North line of said SE ¼ NW ¼, a distance of 470.41 feet; thence S00°36'35"E, a distance of 86.62 feet; thence S89°23'25"W, a distance of 71.00 feet; thence S00°36'35"E, a distance of 56.00 feet; thence N89°23'25"E, a distance of 71.00 feet; thence S00°36'35"E, a distance of 28.89 feet; thence N90°00'00"W, a distance of 469.70 feet; thence N00°50'54"W, a distance of 171.52 feet to the Point of Beginning; said tract being subject to and together with any and all easements of record. Said tract contains 1.76 acres more or less.

3. That the sale and conveyance of such excess property, more specifically described below, to Franklin Field Senior Apartments, LLLP for \$172,500, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved subject to all terms and conditions set forth herein and in the Offer on file in the Office of the City Clerk:

A vacated tract of land in the SE ¼ of the NW Fractional ¼ of Section 31, Township 79 North, Range 24 West, of the 5th P.M., in the City of Des Moines, Polk County, Iowa; Beginning at the Northeast Corner of Lot H in Mesa Park, an Official Plat; thence South 90° (degrees) 00' (minutes) 00" (seconds) East, parallel to the North line of said SE ¼ NW ¼, a distance of 470.41 feet; thence S00°36'35"E, a distance of 86.62 feet; thence S89°23'25"W, a distance of 71.00 feet; thence S00°36'35"E, a distance of 56.00 feet; thence N89°23'25"E, a distance of 71.00 feet; thence S00°36'35"E, a distance of 28.89 feet; thence N90°00'00"W, a distance of 469.70 feet; thence N00°50'54"W, a distance of 171.52 feet to the Point of Beginning; said tract being subject to and together with any and all easements of record. Said tract contains 1.76 acres more or less.

4. The Mayor is authorized and directed to sign the Offer to Purchase and, prior to closing, the Quit Claim Deed and related real estate documents for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

Date July 25, 2011

5. Upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the said Deed, 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 following closing, and the Real Estate Division Manager is authorized and directed to forward the original of the documents following closing to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

6. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the Offer to Purchase; to approve and execute documents pertaining to minor or unsubstantial changes to said Offer, following approval of the City's Legal Department as to form; to proceed to closing in accordance with the terms set forth herein and in the Offer; and, if needed, to proceed with and execute documents pertaining to the termination of the Offer if Franklin Field Senior Apartments, LLLP, fails to fulfill the conditions and contract terms required therein, following approval of the City's Legal Department.

7. The proceeds from the sale of this property shall be used to make infrastructure improvements in the Glendale Cemetery or to add open space, and will be deposited into the following account: Fund: CP040, ORG: PKS990000, Project: PKS138.

(Council Communication No. 11-489)

Moved by _____ to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

BSW

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