

Date May 9, 2015

**SET HEARING FOR VACATION OF AIR SPACE AND SUBSURFACE RIGHTS IN A PORTION OF CITY RIGHT-OF-WAY ADJOINING 215 EAST 3<sup>RD</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO 215 EAST 3<sup>RD</sup> STREET, LLC FOR \$683.00**

**WHEREAS**, on April 25, 2016, by Roll Call No. 16-0667, the City Council of the City of Des Moines, Iowa, received and filed a communication from the City Plan and Zoning Commission recommending approval of a request from 215 East 3<sup>rd</sup> Street, LLC for the vacation of a 9-foot by 10-foot segment of East 3<sup>rd</sup> Street adjoining 215 East 3<sup>rd</sup> Street (hereinafter "City Right-of-Way) to allow for encroachment of an entrance canopy feature with support beams and grain silo element, subject to the following conditions:

1. Review and approval of the finalized canopy design and elevations by the City's Planning Administrator.
2. Review and approval of an amended Site Plan by the City's Permit and Development Center for any modified parkway planting scheme along East 3rd Street to accommodate the proposed canopy structure ensuring provision of a minimum 6 feet of public pedestrian way clearance.
3. Compliance with all conditions of the existing Non-exclusive Easement for Encroachment onto City-owned Property allowing door swings.
4. Reservation by City of easements for all existing utilities in place until such time that they are abandoned or are relocated.
5. Compliance with all administrative review comments of the City's Permit and Development Center; and

**WHEREAS**, 215 East 3<sup>rd</sup> Street, LLC, owner of the adjoining property at 215 East 3<sup>rd</sup> Street, has offered to the City the purchase price of \$683.00 for the purchase of a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the right-of-way of an entrance canopy feature with support beams and grain silo element, which price reflects the fair market value of the City Right-of-Way as currently estimated by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air space and subsurface rights in that portion of East 3<sup>rd</sup> Street right-of-way adjoining 215 East 3<sup>rd</sup> Street.

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

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1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating the air space and subsurface rights in a portion of East 3<sup>rd</sup> Street right-of-way adjoining 215 East 3<sup>rd</sup> Street, more specifically described as follows:

**BUILDING ENCROACHMENT**

Two 2.00-foot x 3.50-foot easements in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

**Easement #1**

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 99.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

**Easement #2**

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

**AIR SPACE**

A 9.00-foot x 10.00-foot easement in the right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easement being more particularly described as follows:

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 99.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 9.00 feet; thence North 15°26'52" West, 10.00 feet; thence North 74°33'08" East, 9.00 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East,

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10.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 90.00 square feet.

Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

2. That, if the City Council of the City of Des Moines, Iowa, first decides to vacate the above described right-of-way, the City of Des Moines, Iowa, proposes to convey a Permanent Easement For Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property in the vacated East 3rd Street right-of-way, as legally described as follows, to 215 East 3rd Street, LLC for \$683.00, subject to the requirements of the City Plan and Zoning recommendation, the Offer to Purchase and the existing Non-exclusive Easement for Encroachment onto City-owned Property:

**BUILDING ENCROACHMENT**

Two 2.00-foot x 3.50-foot easements in the vacated right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easements being more particularly described as follows:

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**Easement #2**

Commencing as a point of reference at the Southwest corner of said Parcel B on the East right-of-way line of East 3rd Street; thence North 15°(degrees) 26'(minutes) 52"(seconds) West, 107.08 feet along the East right-of-way line of said East 3rd Street to the Point of Beginning; thence South 74°33'08" West, 3.50 feet; thence North 15°26'52" West, 2.00 feet; thence North 74°33'08" East, 3.50 feet to the East right-of-way line of said East 3rd Street; thence South 15°26'52" East, 2.00 feet along the East right-of-way line of said East 3rd Street to the point of beginning. Containing 7.00 square feet;

**AIR SPACE**

A 9.00-foot x 10.00-foot easement in the vacated right-of-way of East 3rd Street as it is presently established adjoining Parcel B of that Plat of Survey filed in Book 15437 at Page 978 in the Office

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of the Recorder for Polk County, Iowa, of Lots 3 and 4 in Block 2 of Scott and Dean's Addition, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa. Said easement being more particularly described as follows:

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Lying between elevations 31.70 feet and 45.75 feet, City of Des Moines Vertical Datum (reference ground elevation of 21.95 feet at NW corner of easement).

3. That the meeting of the City Council at which the adoption of said ordinance and the conveyance of such easement interests is to be considered shall be on May 23, 2016, said meeting to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
4. That the City Clerk is hereby authorized and directed to publish notice of said proposals in the form hereto attached, all in accordance with §362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

★ Roll Call Number

Agenda Item Number

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Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

*Lisa A. Wieland*

Lisa A. Wieland, Assistant City Attorney

*RSW*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GREY				
HENSLEY				
MOORE				
WESTERGAARD				
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

