



**Roll Call Number**

**Agenda Item Number**

49A

Date May 23, 2016

An Ordinance entitled, "AN ORDINANCE vacating 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",

presented.

Moved by \_\_\_\_\_ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Lisa A. Wieland  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
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

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Prepared by: Lisa A. Wieland, Assistant City Attorney, 400 Robert D. Ray Drive, Des Moines, Iowa 50309 (515) 283-4124  
Return to: City Clerk's Office, 400 Robert D. Ray Drive, Des Moines, Iowa 50309

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE vacating 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.

WHEREAS, all prior requirements of law pertaining to the vacation of public right-of-way have been fully observed; and

WHEREAS, it is desirable that the air space and subsurface rights within the public right-of-way herein described be vacated;

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

Sec. 1. That 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, be and is hereby vacated:

**SUBSURFACE RIGHTS**

Two 2.00-foot x 3.50-foot subsurface areas 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 subsurface areas being more particularly described as follows:

**Subsurface Area #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;

**Subsurface Area #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 air space area 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 air space area 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, 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 air space area).

Sec. 2. The City of Des Moines hereby reserves an easement upon the property described above for the continued use and maintenance of any utilities now in place, with the right of entry for servicing same.

Sec. 3. The vacation of said portion of East 3<sup>rd</sup> Street adjoining 215 East 3<sup>rd</sup> Street is 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.

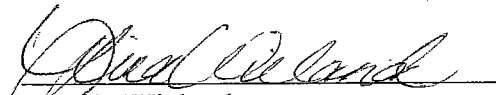
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4. Reservation by the City of easements for all existing utilities in place until such time that they are abandoned or are relocated.
5. Compliance with all administrative review comments of the City's Permit and Development Center; and

Sec. 4. That the City Clerk is hereby authorized and directed to cause certified copies of this ordinance and proof of publication thereof together with proof of publication of the notice of the public hearing on this matter to be properly filed in the office of the Recorder of Polk County, Iowa.

Sec. 5. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:



Lisa A. Wieland  
Assistant City Attorney