

Date December 5, 2016

Page 1

**HOLD HEARING FOR VACATION OF A PORTION OF SOUTHWEST 5<sup>TH</sup> STREET  
RIGHT-OF-WAY ADJOINING 300 SOUTHWEST 5<sup>TH</sup> STREET AND CONVEYANCE  
OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO HARBACH  
LOFTS, LLC FOR \$265.00**

**WHEREAS**, on November 7, 2016, by Roll Call No. 16-1897, 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 Harbach Lofts, LLC for the vacation of a 3-foot by 10-foot segment of Southwest 5<sup>th</sup> Street right-of-way adjoining 300 Southwest 5<sup>th</sup> Street (hereinafter "City Right-of-Way) to allow for permanent building entrance door swing into the right-of-way, subject to the following conditions:

1. Review and approval of an amended Site Plan by the City's Permit and Development Center to ensure that the proposed vacation does not negatively impact the street trees or planter beds within Southwest 5<sup>th</sup> Street right-of-way.
2. Reservation by City of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.

And further subject to planters being placed on each side of the door for the protection of pedestrian traffic when the door is opened.

**WHEREAS**, Harbach Lofts, LLC, owner of the adjoining property at 300 Southwest 5<sup>th</sup> Street, has offered to the City the purchase price of \$265.00 for the purchase of a Permanent Easement For Building Encroachment in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the City Right-of-Way of a permanent building entrance door swing, 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 a portion of said City Right-of-Way; and

**WHEREAS**, on November 21, 2016, by Roll Call No. 16-1989, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interest be set down for hearing on December 5, 2016, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of the proposal to vacate a portion of said City Right-of-Way and convey a Permanent Easement For Building Encroachment 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 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 of the City of Des Moines, Iowa.

Date December 5, 2016

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

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Permanent Easement For Building Encroachment as described below are hereby overruled, and the hearing is closed.
2. 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 a portion of Southwest 5<sup>th</sup> Street right-of-way adjoining 300 Southwest 5<sup>th</sup> Street, more specifically described as follows:

A 3.00 FOOT WIDE PORTION OF SW 5TH STREET LYING EAST OF AND ADJACENT TO LOT 12 IN THE REPLAT OF PART OF FACTORY ADDITION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 12; THENCE S15°18'43"E ASSUMED BEARING FOR THIS DESCRIPTION ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 46.00 FEET TO THE POINT OF BEGINNING; THENCE N74°41'17"E, A DISTANCE OF 3.00 FEET; THENCE S15°18'43"E PARALLEL WITH AND 3.00 FEET EAST OF THE EAST LINE OF SAID LOT 12, A DISTANCE OF 10.00 FEET; THENCE S74°41'17"W, A DISTANCE OF 3.00 FEET TO THE EAST LINE OF SAID LOT 12; THENCE N15°18'43"W ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 30.00 SQUARE FEET.

3. That the sale and conveyance of a Permanent Easement For Building Encroachment within said vacated Southwest 5<sup>th</sup> Street right-of-way, as described below, to Harbach Lofts, LLC for \$265.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, subject to the requirements of the City Plan and Zoning recommendation and the Offer to Purchase, be and is hereby approved:

A VACATED 3.00 FOOT WIDE PORTION OF SW 5TH STREET LYING EAST OF AND ADJACENT TO LOT 12 IN THE REPLAT OF PART OF FACTORY ADDITION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 12; THENCE S15°18'43"E ASSUMED BEARING FOR THIS DESCRIPTION ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 46.00 FEET TO THE POINT OF BEGINNING; THENCE N74°41'17"E, A DISTANCE OF 3.00 FEET; THENCE S15°18'43"E PARALLEL WITH AND 3.00 FEET EAST OF THE EAST LINE OF SAID LOT 12, A DISTANCE OF 10.00 FEET; THENCE S74°41'17"W, A DISTANCE OF 3.00 FEET TO THE EAST LINE OF SAID LOT 12; THENCE N15°18'43"W ALONG THE EAST LINE OF SAID LOT 12, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 30.00 SQUARE FEET.

Date December 5, 2016

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating 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 Permanent Easement for Building Encroachment, 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 Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 16- 690)

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

APPROVED AS TO FORM:

  
 Lisa A. Wieland, Assistant City Attorney

*PJW*

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