

Date February 19, 2018

**SET HEARING FOR VACATION OF PORTIONS OF THE NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING 121 12<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO 12<sup>TH</sup> STREET LOFTS, LLC FOR \$3,200.00**

**WHEREAS**, on January 8, 2018, by Roll Call No. 18-0043, 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 12<sup>th</sup> Street Lofts, LLC for the vacation of a 3.5 foot by 4 foot segment and a 5.5 foot by 12 foot segment of surface rights within the north/south alley lying east of and adjoining 121 12<sup>th</sup> Street (hereinafter collectively “City Right-of-Way”) to allow an electrical room door and transformer enclosure access gates to encroach into the alley, subject to the following conditions:

1. Reservations of any necessary easement for all existing utilities in place until such time that they are abandoned or are relocated;
2. Demonstration by the applicant that it is not feasible for the subject pedestrian door to swing inward to the satisfaction of the Planning Administrator; and
3. A window in the door shall be provided if it is determined by the Planning Administrator that the door cannot swing into the electrical room per condition #2.

**WHEREAS**, the City’s Planning Administrator is satisfied with 12<sup>th</sup> Street Lofts, LLC’s compliance with conditions 2 and 3; and

**WHEREAS**, 12<sup>th</sup> Street Lofts, LLC, owner of the adjoining property, 121 12<sup>th</sup> Street, has offered to the City the purchase price of \$3,200.00 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 for two permanent building door swings for electrical and transformer access, subject to the reservations of any necessary easement for all existing utilities in place until such time that they are abandoned or are relocated, which price reflects the fair market value of the easement interests in said City Right-of-Way as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the City Right-of-Way proposed to be vacated and sold, and the public would not be inconvenienced by reason of the vacation and sale of the easement interests in said City Right-of-Way.

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

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating a portion of the adjoining north/south alley, more specifically described as

.....  
**Date** February 19, 2018

follows, subject to the reservations of any necessary easement for all existing utilities in place until such time that they are abandoned or are relocated:

Electrical Door Swing:

That part of the Vacated Public Alley right-of-way lying East of and adjoining Lot 3 in Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said Lot 3 in Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence North 15°25'43" West, 15.50 feet along the East line of said Lot 3 to the Point of Beginning; thence continuing North 15°25'43" West, 4.00 feet along the East line of said Lot 3; thence North 74°34'17" East, 3.50 feet; thence South 15°25'43" East, 4.00 feet; thence South 74°34'17" West, 3.50 feet to the point of beginning.

Containing 14.00 square feet.

Transformer Gate Door Swing:

That part of the Vacated Public Alley right-of-way lying East of and adjoining Lot 3 in Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the Southeast corner of said Lot 3 in Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence North 15°25'43" West, 2.92 feet along the East line of said Lot 3 to the Point of Beginning; thence continuing North 15°25'43" West, 12.00 feet along the East line of said Lot 3; thence North 74°34'17" East, 5.50 feet; thence South 15°25'43" East, 12.00 feet; thence South 74°34'17" West, 5.50 feet to the point of beginning.

Containing 66.00 square feet.

2. That, if the City Council of the City of Des Moines, Iowa, first decides to vacate the above described City Right-of-Way, the City of Des Moines, Iowa, further proposes to convey a Permanent Easement For Building Encroachment therein, as legally described as follows, to 12<sup>th</sup> Street Lofts, LLC, for \$3,200.00, subject to the reservations of any necessary easement for all existing utilities in place until such time that they are abandoned or are relocated:

.....  
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Containing 14.00 square feet.

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Containing 66.00 square feet.

3. That the meeting of the City Council at which said vacation and the conveyance is to be considered shall be on March 8, 2018, said meeting to be held at 8:00 a.m., in the City Council Chamber, Richard A. Clark Municipal Service Center, 1551 E. Martin Luther King Jr. Parkway, 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

22

Date February 19, 2018

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

APPROVED AS TO FORM:

  
Lisa A. Wieland, Assistant City Attorney

*RTW*

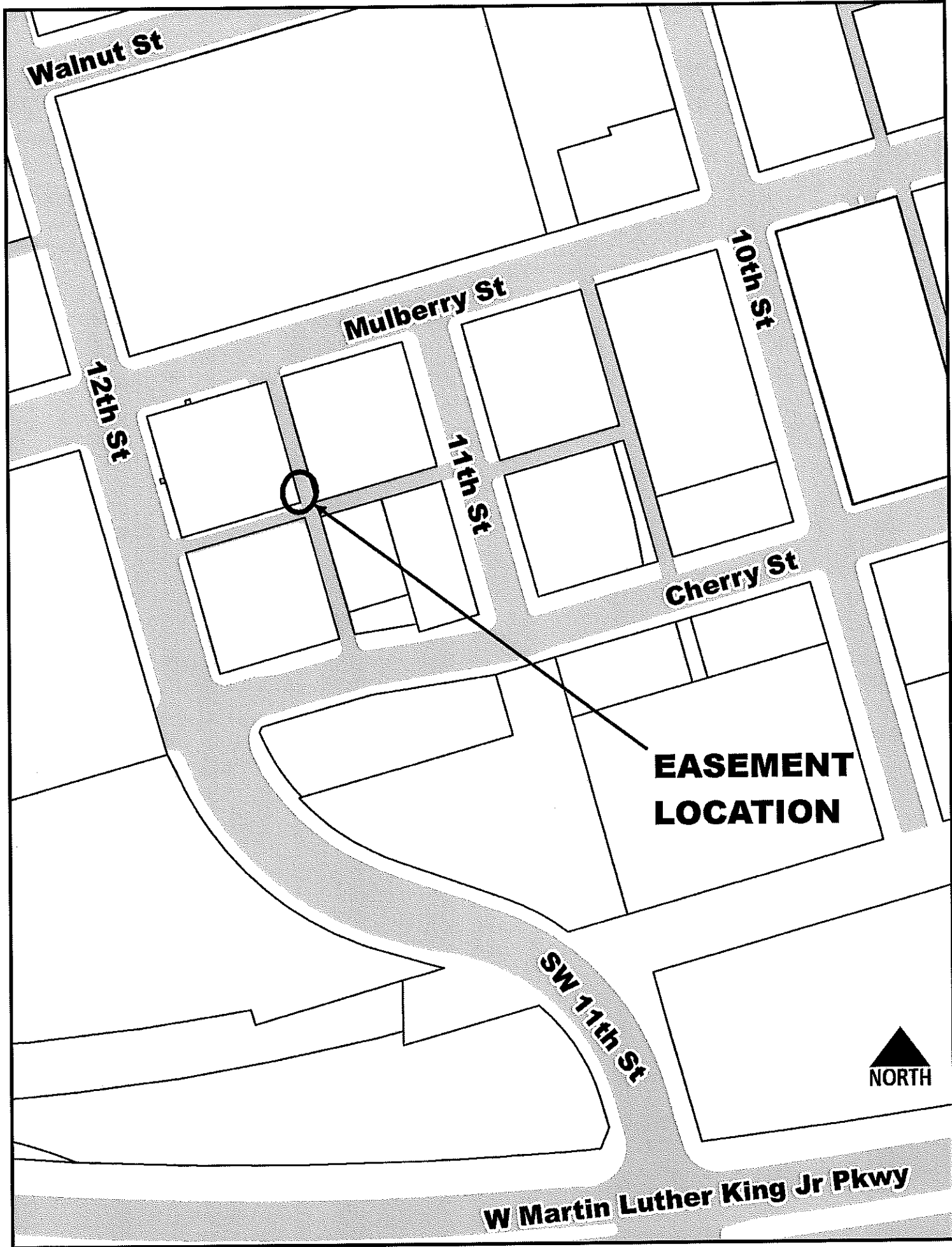
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
COLEMAN				
GATTO				
GRAY				
MANDELBAUM				
WESTERGAARD				
TOTAL				
MOTION CARRIED	APPROVED			
_____ Mayor				

**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



**EASEMENT  
LOCATION**



**W Martin Luther King Jr Pkwy**

22



January 3, 2018

Date February 19, 2018

Agenda Item 22

Roll Call # \_\_\_\_\_

Honorable Mayor and City Council  
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their December 21, 2017 meeting, the following action was taken regarding a request from 12<sup>th</sup> Street Lofts, LLC (owner), 121 12<sup>th</sup> Street, represented by Ashley Aust (officer) for vacation of a 3.5-foot by 4-foot segment and a 5.5 foot by 12-foot segment of the surface rights within the adjoining north/south alley to allow an electrical room door and transformer enclosure access gates respectively to encroach into the alley.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 14-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Chris Cutler	X			
David Courard-Hauri	X			
Jacqueline Easley	X			
Jann Freed	X			
John "Jack" Hilmes	X			
Lisa Howard	X			
Carolyn Jenison				X
Greg Jones	X			
William Page	X			
Mike Simonson	X			
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier	X			

**APPROVAL** of the requested surface rights vacations subject to the following conditions:  
(11-2017-1.19)

1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.

- 2. Demonstration by the applicant that it is not feasible for the subject pedestrian door to swing inward to the satisfaction of the Planning Administrator.
- 3. A window in the door shall be provided if it is determined by the Planning Administrator that the door cannot swing into the electrical room per condition #2.

Written Responses

0 in Favor  
0 in opposition

**RECOMMENDATION TO THE P&Z COMMISSION**

Staff recommends approval of the requested surface rights vacations subject to the following conditions:

- 1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.
- 2. Demonstration by the applicant that it is not feasible for the subject pedestrian door to swing inward to the satisfaction of the Planning Administrator.
- 3. A window in the door shall be provided if it is determined by the Planning Administrator that the door cannot swing into the electrical room per condition #2.

**STAFF REPORT TO THE PLANNING COMMISSION**

**I. GENERAL INFORMATION**

- 1. **Purpose of Request:** The applicant is proposing to renovate the existing building into 26 dwelling units. The electrical room and the transformer room for the building are located within the historic building with access from the alley right-of-way. Due to the size of the rooms, the access gates to the transformer room and the door to the electrical room are proposed to swing out into the alley. The applicant is not permitted to use overhead doors for this project. The proposed right-of-way vacations are necessary for the door configurations to be constructed as proposed.
- 2. **Size of Site:** 80 square feet.
- 3. **Existing Zoning (site):** "C-3" Central Business District, "GGP" Gambling Games Prohibition Overlay District, "D-O" Downtown Overlay District, and "FSO" Freestanding Signs Overlay District.
- 4. **Existing Land Use (site):** The site contains a two-story building undergoing renovation to a multiple family residential building.
- 5. **Adjacent Land Use and Zoning:**

North – “C-3”; *Use is a parking garage.*

South – “C-3A”; *Use is office and warehousing.*

East – “C-3”; *Use is a multiple-family building.*

West – “C-3”; *Use is a parking garage.*

- 6. General Neighborhood/Area Land Uses:** The subject alley right-of-way is located in the alley to the east of the 12<sup>th</sup> Street Lofts building which is currently under renovation. The property is located on the southeast side of the Mulberry Street and 12<sup>th</sup> Street intersection. It is in an area south of Western Gateway Park that contains a mix of commercial and residential uses.
- 7. Applicable Recognized Neighborhood(s):** The subject property is located in the Downtown Des Moines Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on December 1, 2017. Additionally, separate notifications of the hearing for this specific item were mailed on December 11, 2017 (10 days prior to the hearing) to the Downtown Des Moines Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site. A Final Agenda was mailed to the neighborhood association on December 15, 2017.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Downtown Des Moines Neighborhood Association notices were mailed to Tony Filippini, 1719 Grand Avenue, #210, Des Moines, IA 50309.

- 8. Relevant Zoning History:** On February 26, 2007, by Ordinance Number 14631, the City Council rezoned the subject property from "C-3A" Central Business District Support Commercial District to a Limited "C-3" Central Business District Commercial District classification subject to the following conditions:
1. No activity shall be permitted on the Property that emits sound at a volume that when measured at the property line of any nearby residential use, exceeds the maximum permitted sound levels applicable at the receiving property line in a "R1" single-family residential district. The benefit of this limitation is not intended to apply to a residential use on the Property.
  2. No portion of the Property shall be used as an Adult Entertainment Business, as that term is now defined in the Zoning Ordinance of the City of Des Moines.

On March 2, 2017, the Plan and Zoning Commission conditionally approved vacation of a 5-foot by 5-foot segment of surface rights in 12th Street and a 5-foot by 5-foot segment of surface rights in Mulberry Street to allow for entrance door swings and a Site Plan “Station 121” to allow renovation of the existing two-story warehouse and office building into 26 dwelling units.

- 9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** “Downtown Mixed Use”. The Plan describes this category as an “area that allows mixed-use, high-density residential uses, and compact combinations of pedestrian-oriented retail, office,



residential, and parking in downtown. Should include active uses (e.g. retail) on ground floor, particularly at key intersections.”

**10. Applicable Regulations:** In consideration of the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

**II. ADDITIONAL APPLICABLE INFORMATION**

- 1. **Utilities:** There are no identified utilities in the subject alley right-of-way. An easement must be reserved for any existing utilities until such time that they are abandoned or relocated.
- 2. **Street System/Access:** The subject alley right-of-way is utilized for access to the rear of the buildings on the block.
- 3. **Additional Information:** The applicant has indicated that the gates to the transformer room would be cast iron gates that would allow visibility through them. The door to the electrical room has been indicated to be solid and would not allow visibility through it. Staff believes the electrical room door should swing inward if feasible. If the applicant provides evidence to the satisfaction of the Planning Administrator that it is not feasible for the door to swing inward, a window should be included in the door to allow for increased visibility and safety for service persons and users of the alley right-of-way.

**SUMMARY OF DISCUSSION**

Jacqueline Easley asked if anyone was present to speak on this item. No one was present or requested to speak.

**COMMISSION ACTION:**

Dory Briles moved staff recommendation of approval of the requested surface rights vacations subject to the following conditions:

- 1. Reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated.
- 2. Demonstration by the applicant that it is not feasible for the subject pedestrian door to swing inward to the satisfaction of the Planning Administrator.
- 3. A window in the door shall be provided if it is determined by the Planning Administrator that the door cannot swing into the electrical room per condition #2.

Motion passed: 14-0

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'm. ludwig', written in a cursive style.

Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments