

Date June 3, 2019

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**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF MAINE STREET RIGHT-OF-WAY LOCATED EAST OF AND ADJOINING 100 INDIANA AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT – DOOR SWING TO EMOGINE, INC. FOR \$50.00**

**WHEREAS**, Emogine, Inc., an Iowa corporation, owner of 100 Indiana Avenue, Des Moines, Iowa, has offered to the City the purchase price of \$50.00 for the purchase of a Permanent Easement for Building Encroachment – Door Swing (hereinafter “Easement”) upon a portion of vacated Maine Street right-of-way adjoining 100 Indiana Avenue, hereinafter more fully described, to allow for the retention, maintenance and repair of an existing building door entrance and door swing area into and upon said right-of-way, subject to reservation of easements for all public utilities in place, which price reflects the fair market value of the Easement as determined 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 conveyed, and the public would not be inconvenienced by reason of vacation of said right-of-way and the conveyance of the Easement within said City Property; and

**WHEREAS**, on May 20, 2019, by Roll Call No. 19-0795, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Permanent Easement for Building Encroachment – Door Swing be set for hearing on June 3, 2019, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to vacate a 4.0 foot by 4.0 foot segment of the west side of Maine Street right-of-way, adjoining 100 Indiana Avenue, Des Moines, Iowa, and convey a Permanent Easement for Building Encroachment – Door Swing in such vacated right-of-way, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the 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, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of a 4.0 foot by 4.0 foot segment of the west side of Maine Street right-of-way, adjoining 100 Indiana Avenue, Des Moines, Iowa, and conveyance of a Permanent Easement for Building Encroachment – Door Swing in such vacated right-of-way, as described herein, are hereby overruled and the hearing is closed.

Date June 3, 2019

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 said street right-of-way, legally described as follows, and said vacation is hereby approved:

A PART OF THE MAINE STREET RIGHT OF WAY LYING EAST OF AND ADJOINING LOT 2, BLOCK 23, CENTRAL PLACE, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, SAID CENTRAL PLACE; THENCE SOUTH 0°31'08" EAST ALONG THE EAST LINE OF SAID BLOCK 23, A DISTANCE OF 61.78 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°28'52" EAST, 4.00 FEET; THENCE SOUTH 00°31'08" EAST, 4.00 FEET; THENCE SOUTH 89°28'52" WEST, 4.00 FEET TO SAID EAST LINE; THENCE NORTH 00°31'08" WEST ALONG SAID EAST LINE, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

3. The proposed conveyance of a Permanent Easement for Building Encroachment – Door Swing in such vacated right-of-way, as legally described below and to the grantees and for the consideration identified below, subject to reservation of easements therein, is hereby approved:

Grantee: Emogine, Inc.

Consideration: \$50.00

Legal Description:

A PART OF THE VACATED MAINE STREET RIGHT OF WAY LYING EAST OF AND ADJOINING LOT 2, BLOCK 23, CENTRAL PLACE, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1, SAID CENTRAL PLACE; THENCE SOUTH 0°31'08" EAST ALONG THE EAST LINE OF SAID BLOCK 23, A DISTANCE OF 61.78 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°28'52" EAST, 4.00 FEET; THENCE SOUTH 00°31'08" EAST, 4.00 FEET; THENCE SOUTH 89°28'52" WEST, 4.00 FEET TO SAID EAST LINE; THENCE NORTH 00°31'08" WEST ALONG SAID EAST LINE, 4.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Building Encroachment – Door Swing for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. 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 – Door Swing, 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 – Door Swing, together with a certified copy of this resolution and

**Date** June 3, 2019

of the affidavit of publication of the 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 a copy of the other documents to the grantees.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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

APPROVED AS TO FORM:



Ann DiDonato, Assistant City Attorney

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

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★ Roll Call Number  
18-2061

Agenda Item Number  
24

Date December 17, 2018

**RECEIVE AND FILE COMMUNICATION FROM THE PLAN AND ZONING COMMISSION  
REGARDING REQUEST FROM EMOGINE, INC. FOR VACATION OF A SEGMENT OF  
MAINE STREET ADJOINING 100 INDIANA AVENUE**

WHEREAS, the City Plan and Zoning Commission has advised that at a public hearing held on December 6, 2018, its members voted 9-0 to recommend **APPROVAL** of a request from Emogine, Inc. (owner), represented by Stuart Alexander Napier (officer), to vacate a 4-foot by 4-foot segment on the west side of Maine Street, adjoining 100 Indiana Avenue, to accommodate a door swing encroachment by the existing building, subject to reservation of easements for all public utilities in place.

MOVED by Boesen to receive and file the attached communication from the Plan and Zoning Commission, and refer to the Engineering Department, Real Estate Division.

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

(11-2018-1.28)

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie  
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.

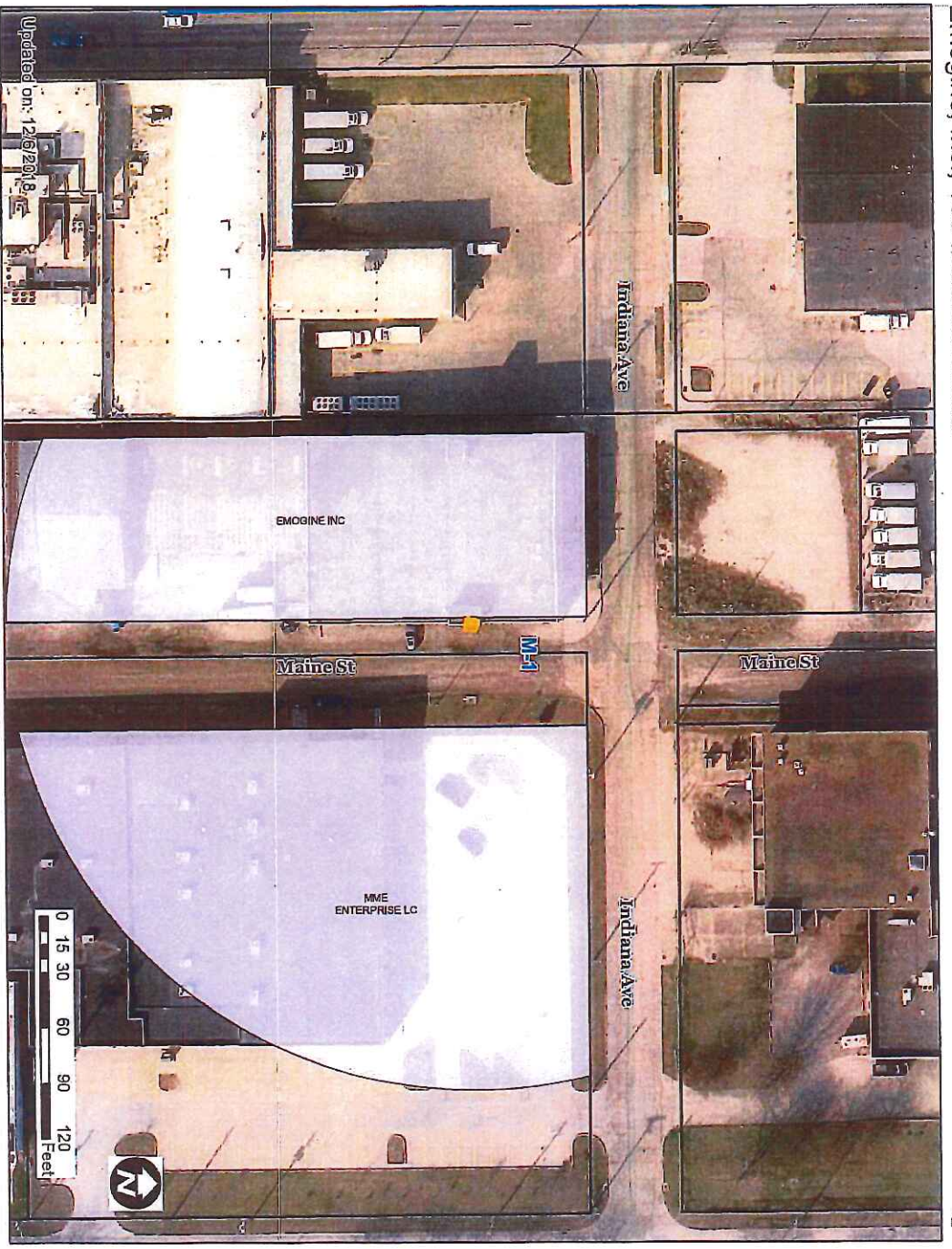
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Diane Rauh

City Clerk

Emogine, Inc., 100 Indiana Avenue

11-2018-1.28



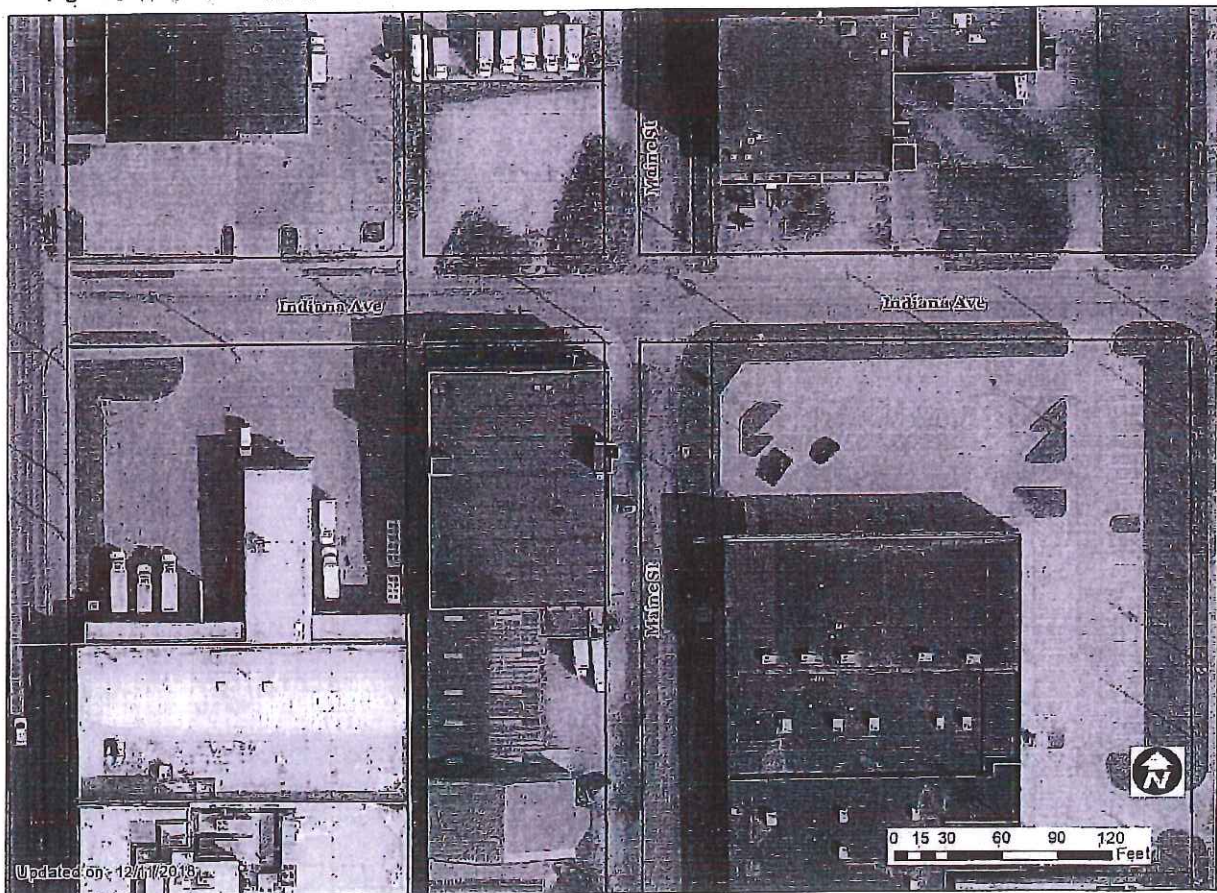
1 Inch = 68 feet

57 24

Emogine, Inc. (owner), 100 Indiana Avenue, represented by Stuart Alexander Napier (officer) .				File #	
				11-2018-1.28	
Description of Action	Vacation of surface rights on a 4-foot by 4-foot segment on west side of Maine Street adjoining the subject property, to accommodate a door swing encroachment by the existing building.				
PlanDSM Future Land Use	Current: Industrial. Proposed: N/A.				
Mobilizing Tomorrow Transportation Plan	No planned improvements.				
Current Zoning District	"M-1" Light Industrial District, "GGP" Gambling Games Prohibition Overlay District and "FSO" Freestanding Signs Overlay District.				
Proposed Zoning District	N/A.				
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition	
Subject Property	0	0			
Outside Area (200 feet)					
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes	
	Denial			No	X

Emogine, Inc., 100 Indiana Avenue

11-2018-1.28



1 inch = 68 feet



Date December 17, 2018  
 Agenda Item 24  
 Roll Call # \_\_\_\_\_

December 12, 2018

Honorable Mayor and City Council  
 City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their December 6, 2018 meeting, the following action was taken regarding a request from Emogine, Inc. (owner), 100 Indiana Avenue, represented by Stuart Alexander Napier (officer) for vacation of surface rights on a 4-foot by 4-foot segment on west side of Maine Street adjoining the subject property to accommodate a door swing encroachment by the existing building.

**COMMISSION RECOMMENDATION:**

After public hearing, the members voted 9-0 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			

**RECOMMEND APPROVAL** of the requested vacation of right-of-way subject to the reservation of easements for all public utilities in place.

(11-2018-1.28)

Written Responses

0 in Favor

0 in opposition

## RECOMMENDATION TO THE P&Z COMMISSION

Staff recommends approval of the requested vacation of right-of-way subject to the reservation of easements for all public utilities in place.

## STAFF REPORT TO THE PLANNING COMMISSION

### I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacation would allow an existing door swing encroachment to be retained.
2. **Size of Site:** The applicant's property measures 100 feet by 450 feet (45,000 square feet). A total of 8 square feet of right-of-way is proposed to be vacated.
3. **Existing Zoning (site):** "M-1" Light Industrial District, "GGP" Gambling Games Prohibition Overlay District, and "FSO" Freestanding Sign Overlay District.
4. **Existing Land Use (site):** The adjoining parcel is occupied by a warehouse type building that the applicant is planning to occupy with 8,373 square feet of assembly space, 16,342 square feet of warehouse space, and 1,505 square feet of office space.
5. **Adjacent Land Use and Zoning:**
  - North** – "M-1"; Uses are light industrial.
  - South** – "M-1"; Use is a coffee shop.
  - East** – "M-1"; Uses are light industrial.
  - West** – "M-1"; Use is the Des Moines Public School District central food facility.
6. **General Neighborhood/Area Land Uses:** The site is located on the southwest corner of the Indiana Avenue and Maine Street intersection in the Central Place Industrial Park, which is bounded by the Des Moines River, 2nd Avenue, and University Avenue.
7. **Applicable Recognized Neighborhood(s):** The subject property is in the River Bend Neighborhood. This neighborhood was notified of the Commission meeting by mailing of the Preliminary Agenda on November 16, 2018. Additionally, separate notifications of the hearing for this specific item were mailed on November 26, 2018 (10 days prior to the hearing) to the Downtown Des Moines Neighborhood Association. A final agenda was mailed on November 30, 2018.

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 River Bend Neighborhood Association notices were mailed to Breanne Barnum, 1919 Arlington Avenue, Des Moines, IA 50314.
8. **Relevant Zoning History:** On July 25, 2018, by Docket Number ZON2018-00106, the Zoning Board of Adjustment granted an Exception of up to 32 parking spaces less than



the calculated minimum 64 off-street parking spaces required for 8,373 square feet of assembly use, 16,342 square feet of warehouse use, and 1,505 square feet of office use. The Board also granted a Variance of 25 feet less than the minimum required 25-foot front yard setback to allow retention of the existing building that is within 0 feet of the front property lines.

9. **PlanDSM Land Use Plan Designation:** The subject property and rights-of-way are designated as "Industrial" on the Future Land Use Map.
10. **Applicable Regulations:** The Commission, considering the criteria set forth in Chapter 18B of the Iowa Code, 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:** No utilities have been identified that would be impacted by the proposed vacation. Staff recommends approval subject to the reservation of easements for any existing utilities.
2. **Street System/Access:** The proposed vacations would have a negligible impact on the function of the Maine Street sidewalk.

## SUMMARY OF DISCUSSION


Jacqueline Easley asked if anyone was present to speak on this item. None were present or requested to speak.

## COMMISSION ACTION:

Jann Freed made a motion to recommend approval of the requested vacation of right-of-way subject to the reservation of easements for all public utilities in place.

Motion passed: 9-0

Respectfully submitted,

  
Michael Ludwig, AICP  
Planning Administrator

MGL:tjh  
Attachments