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Date May 20, 2024

SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF SE 6TH STREET RIGHT-OF-WAY ADJOINING 2428 SE 6TH STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO JERRY F. MILLER AND BARBARA L. MILLER IN EXCHANGE FOR PROPERTY RIGHTS GRANTED TO THE CITY FOR THE 2023 NEIGHBORHOOD SIDEWALK PROGRAM

WHEREAS, on October 3, 2022, by Roll Call No. 22-1501, the City Council of the City of Des Moines authorized the acquisition of the necessary property interests for the 2023 Neighborhood Sidewalk Program Project (hereinafter “Project”); and

WHEREAS, as part of the Project, the City acquired a Temporary Easement for Construction and Construction-Related Activities over a portion of the property located at 2428 SE 6th Street, Des Moines, Iowa from Jerry F. Miller and Barbara L. Miller, the owners of said property; and

WHEREAS, when the property at 2428 SE 6th Street was surveyed for the Project, it was discovered that the existing building encroaches slightly into the adjoining SE 6th Street right-of-way; and

WHEREAS, the City’s Real Estate Division negotiated a settlement with the property owners that included the provision that the City would vacate and convey a Permanent Easement for Building Encroachment (“Easement”) on the portion of SE 6th Street right-of-way encumbered by the existing building, to Jerry F. Miller and Barbara L. Miller in exchange for the Temporary Easement for Construction and Construction-Related Activities needed for the Project; and

WHEREAS, the request to vacate and convey a Permanent Easement for Building Encroachment on the SE 6th Street right-of-way was not presented to the City’s Plan and Zoning Commission for review and has instead been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b), Des Moines, Iowa, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated and further subject to the condition that the easement shall terminate and the rights revert to the City in the event of destruction of the existing structure; and

WHEREAS, there is no known current or future public need or benefit for the Property, and the City will not be inconvenienced by the vacation of said property and the conveyance of the Easement in such vacated right-of-way.

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 that portion of the SE 6th Street right-of-way located east of and adjoining 2428 SE 6th Street, legally described as follows:

A PORTION OF SOUTHEAST 6TH STREET RIGHT OF WAY, ADJOINING LOT 4, TALLMADGE'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH 81.26 FEET OF THE NORTH 171.26 FEET OF THE EAST 155.34 FEET OF SAID LOT 4; THENCE NORTH 00°34'08" WEST, 32.53 FEET ON THE EAST LINE OF SAID LOT 4; THENCE SOUTH 89°25'52" EAST, 3.00 FEET; THENCE SOUTH 00°34'08" EAST, 32.58 FEET; THENCE NORTH 89°34'12" WEST, 3.00 FEET TO THE POINT OF BEGINNING CONTAINING 98 SQUARE FEET, MORE OR LESS.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Building Encroachment on such vacated right-of-way, described below, in exchange for the Temporary Easement for Construction and Construction-Related Activities required for the 2023 Neighborhood Sidewalk Program Project, to Jerry F. and Barbara L. Miller, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that the easement shall terminate and the rights revert to the City in the event of destruction of the existing structure:

A PORTION OF VACATED SOUTHEAST 6TH STREET RIGHT OF WAY, ADJOINING LOT 4, TALLMADGE'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH 81.26 FEET OF THE NORTH 171.26 FEET OF THE EAST 155.34 FEET OF SAID LOT 4; THENCE NORTH 00°34'08" WEST, 32.53 FEET ON THE EAST LINE OF SAID LOT 4; THENCE SOUTH 89°25'52" EAST, 3.00 FEET; THENCE SOUTH 00°34'08" EAST, 32.58 FEET; THENCE NORTH 89°34'12" WEST, 3.00 FEET TO THE POINT OF BEGINNING CONTAINING 98 SQUARE FEET, MORE OR LESS.

3. That the meeting of the City Council at which the adoption of said ordinance and conveyance of such permanent easement is to be considered shall be on June 3, 2024, 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. At that time, the City Council will consider the above-described proposal and any

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other(s) submitted prior to or during the public hearing. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

4. The City Clerk is hereby authorized and directed to publish notice of said proposal and hearing in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.
5. There will be no proceeds associated with the conveyance of this easement.

Moved by _____ to adopt.

Second by _____.

APPROVED AS TO FORM:

/s/Mackenzie L. Moreno
Mackenzie L. Moreno, Assistant City Attorney

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

CERTIFICATE

I, LAURA BAUMGARTNER, 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.

Laura Baumgartner, City Clerk

