

★ **Roll Call Number**

08-1047

Agenda Item Number

7A

Date June 9, 2008

Whereas, the City has received an application from Whatkin Enterprises, LLC, for a Sidewalk Cafe Lease for a portion of the subsurface area under portions of the rights-of-way adjoining the Teachout Building at 500 E Locust Street; and

Whereas, the rights-of-way adjoining 500 E Locust Street has not been previously vacated; and,

WHEREAS, the affected portion of the public rights-of-way must first be vacated before the City may approve the proposed Sidewalk Cafe Lease; and,

WHEREAS, on May 19, by Roll Call No. 08- 873, it was duly resolved by the City Council that the proposed vacation and lease of such right-of-way be set down for hearing on June 9, 2008, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of said proposal to vacate and lease public right-of-way was published 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 lease, 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, the objections to said proposed vacation and lease of public right-of-way as described below are hereby overruled and the hearing is closed.
2. There is no public need for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of the subsurface areas under portions of Locust Street and E. 5th Street adjoining 500 E. Locust Street, more specifically described as follows:

The subsurface area below grade under the East 11.0 feet of the E. 5th Street right-of-way lying West of and adjoining Lot 2, in H.E. TEACHOUT PLACE, an Official Plat, and under the North 9.0 feet of the E. Locust Street right-of-way lying South of and adjoining the said Lot 2, and lying South of and adjoining the said East 11.0 feet of the E. 5th Street right-of-way lying West of and adjoining said Lot 2, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(continued)

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3. Subject to final passage and publication of the ordinance vacating such right-of-way, the lease of such vacated subsurface rights-of-way to Whatkin Enterprises, LLC, for a sidewalk cafe serving alcoholic beverages is hereby approved, and the Permit and Development Center Administrator is hereby authorized and directed to sign a Sidewalk Cafe Lease with Whatkin Enterprises, LLC, in the approved standard form.

(Council Communication No. 08- **31P**)

MOVED by Meyer to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN				✓
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	6			1

MOTION CARRIED

APPROVED

T. M. Franklin
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