

★ Roll Call Number

09-2003

Agenda Item Number

14

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Date November 9, 2009

**RESOLUTION AUTHORIZING AND APPROVING CONDITIONAL ASSIGNMENT OF LEASE  
FOR BUILDING ENCROACHMENT ON A PORTION OF CITY OWNED PROPERTY  
LOCATED AT 1249 MCKINLEY AVENUE**

**WHEREAS**, the City of Des Moines is the owner of real property located at 1249 McKinley Avenue and used by the Fire Department as Fire Station No. 8; and

**WHEREAS**, the Barrett Family Trust is the owner of the adjoining real property located at 1232 Herold Avenue, a portion of which abuts a portion of 1249 McKinley Avenue; and

**WHEREAS**, the Barrett Family Trust desired to lease an approximately 9.34 feet by 24.09 feet portion on the north side of the abutting portion of 1249 McKinley Avenue for a building encroachment; and

**WHEREAS**, on May 21, 2007, by Roll Call No. 07-971, it was duly resolved by the City Council that the proposed lease of such real property be set down for hearing on June 4, 2007, at 5:00 p.m. in the Council Chamber; and

**WHEREAS**, on June 4, 2007, by Roll Call No. 07-1101, it was duly resolved by the City Council that the proposed lease of such real property and Lease Agreement associated therewith be approved; and

**WHEREAS**, the lessee Barrett Family Trust desires to sell the property located at 1232 Herold Avenue, and in order to place said real property for sale and convey it to a new owner, the Barrett Family Trust has requested to assign their lease interest and the Lease Agreement to a potential new owner; and

**WHEREAS**, the current terms of the Lease Agreement prevent assignment by the lessee Barrett Family Trust without the prior written consent of the City; and

**WHEREAS**, the City will not be inconvenienced by assignment of this original Lease Agreement to a new owner of the 1232 Herold Avenue property that agrees to meet the terms and purpose of the lease.

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

1. Until such time as the property located at 1232 Herold Avenue is sold or otherwise conveyed of record, the original Lease Agreement will remain in effect and the Barrett Family Trust will remain obligated as lessee thereunder to fulfill all terms and conditions of said original Lease Agreement.
2. The request to assign the lessee interest in and to the original Lease Agreement between the Barrett Family Trust and the City of Des Moines, is hereby conditionally approved, subject to completed sale or other recorded conveyance of the property located at 1232 Herold Avenue, and further subject to review and determination by the Real Estate Division Manager of the City's Engineering Department that the proposed

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lease assignee can and agrees to meet the terms and purpose of said Lease Agreement and has provided to the City any lease payments then due and proof of insurance as required under the original Lease Agreement, and further subject to approval by the Real Estate Division Manager and the City's Legal Department of the form of lease assignment between the Barrett Family Trust and the proposed lease assignee.

3. If the preceding conditions are met, then the City's Real Estate Division Manager is hereby further authorized and directed on behalf of the City to provide the written consent necessary for approval of assignment of the original Lease Agreement by the Barrett Family Trust.

4. The City's Real Estate Division Manager is hereby further authorized to review, approve and provide written consent for any similar future lease assignments for this Lease Agreement on behalf of the City of Des Moines, and to administer the terms of the Lease Agreement and assignment(s) thereto.

5. In the event that it is determined by the Real Estate Division Manager that the proposed lease assignee cannot or will not meet the terms of the original Lease Agreement, the Real Estate Division Manager is hereby authorized and directed to terminate the original Lease Agreement and/or to disallow assignment of the lessee's interest therein.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

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

*PSW*

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

**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.

T. M. Franklin  
 Mayor

Diane Rauh  
 City Clerk