

★ Roll Call Number

12-1971

Agenda Item Number

52A

Date December 17, 2012

HOLD HEARING FOR AMENDMENT OF VACATION ORDINANCE NO. 15, 014
REGARDING RESERVATION OF UTILITY EASEMENTS ON VACATED BOTANICAL
CENTER AND ADJACENT GROUNDS PROPERTY AND FOR AMENDMENT OF LEASE
OF SUCH VACATED PROPERTY TO GREATER DES MOINES BOTANICAL GARDEN

WHEREAS, the City of Des Moines owns and operates the City of Des Moines Botanical Center, including adjacent greenhouses, located at 909 Robert D. Ray Drive, Des Moines, Iowa 50316-2897 ("Botanical Center"), and approximately 13.498 acres of grounds adjacent to the Botanical Center and between the Botanical Center and the Des Moines River, including the park drive known as Robert D. Ray Drive; and

WHEREAS, on May 9, 2011, by Roll Call No. 11-0822, the City Council approved the Lease Agreement in which the Greater Des Moines Botanical Garden corporation ("GDMBG") agreed to be responsible, at its cost, for \$7,500,000 in improvements, including expanded gardens on the grounds of the Botanical Center, by June 1, 2015, and to create an endowment of \$2,000,000 for operational expenses at the Botanical Center and grounds, and \$500,000 for construction related costs and operating costs during and immediately after construction as consideration for rent, for an initial period of 25 years, with two 25 year renewal options at the option of the GDMBG ("Lease Agreement"); and

WHEREAS, per the Lease Agreement, such improvements must be constructed in accordance with a Master Plan approved by the City Council; and

WHEREAS, on June 11, 2012, by Roll Call No. 12-0935, the City Council approved the conceptual Master Plan developed by GDMBG for construction of improvements in the Botanical Center and its grounds; and

WHEREAS, the Lease Agreement will commence on January 1, 2013; and

WHEREAS, Section IX.F of the Lease Agreement requires the City to install a fire hydrant and GDMBG has agreed to install the hydrant with the City to reimburse GDMBG for its cost up to \$18,5000; and

WHEREAS, Section IX.E of the Lease Agreement requires the City to remove the "Metro Net" shared communications system fiber spur connection and GDMBG desires to continue to use the current connection until approximately July 1, 2013 and the City desires to continue location of the Metro Net trunk fiber infrastructure on the leased premises and to relocate it at City expense; and

WHEREAS, City staff and GDMBG have negotiated an amendment to the Lease Agreement incorporating the above described terms, a copy of which is on file in the City Clerk's Office; and

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WHEREAS, it is proposed that an ordinance amending Ordinance No.15,014, which vacated as parkland and right-of-way the below described Des Moines Botanical Center at 909 Robert D. Ray Drive and approximately 13.498 acres of real estate adjacent to the Botanical Center and lying between the Botanical Center and the Des Moines River, including the park drive known as Robert D. Ray Drive from north of the Interstate 235 bridge to East 6th Street, be amended by providing for a reservation of an easement for utilities with recorded easements and for the Metro Net shared communications system trunk fiber infrastructure:

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF EAST UNIVERSITY AVENUE AND THE WEST RIGHT-OF-WAY LINE OF EAST 6TH STREET, BOTH RIGHTS-OF-WAY AS PRESENTLY ESTABLISHED; THENCE SOUTH ON THE SAID WEST RIGHT-OF-WAY LINE TO THE INTERSECTION WITH THE NORTH LINE OF LOT 5 OF RIVER HILLS PLAT FOUR, AN OFFICIAL PLAT; THENCE WEST ON THE SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID LOT 5, ALSO BEING ON THE EAST LINE OF LOT 6 OF SAID RIVER HILLS PLAT FOUR; THENCE SOUTHERLY ON THE EAST LINE OF SAID LOT 6 TO A POINT WHICH IS 72.54 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT 6, ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY I-235 AS SHOWN IN BOOK 9703 PAGE 595 OF THE CONVEYANCE QUIT CLAIM DEED IN THE POLK COUNTY RECORDERS OFFICE; THENCE SOUTHWESTERLY 91.06 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235; THENCE WESTERLY ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID I-235 TO THE WESTERLY CURB LINE OF ROBERT D. RAY DRIVE, AS PRESENTLY ESTABLISHED; THENCE NORTHEASTERLY ALONG THE WESTERLY CURB LINE OF SAID ROBERT D. RAY DRIVE A DISTANCE OF 175 FEET; THENCE WESTERLY, PERPENDICULAR TO SAID WESTERLY CURB LINE, TO THE EASTERLY BANK OF THE DES MOINES RIVER; THENCE NORTHEASTERLY ALONG SAID EASTERLY BANK TO THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE; THENCE EAST ON THE SOUTH RIGHT-OF-WAY LINE OF SAID EAST UNIVERSITY AVENUE TO THE POINT OF BEGINNING, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND EXCEPT FOR A 20.0 FOOT WIDE STRIP OF LAND FOR THE RELOCATED ALIGNMENT OF THE MULTI-USE RECREATIONAL TRAIL.

WHEREAS, on December 3, 2012, by Roll Call No. 12-_____, it was duly resolved by the City Council that said proposed ordinance to amend Ordinance No. 15,014 and Lease Agreement amendment be set down for hearing on December 17, 2012, at 5:00 pm in the Council Chamber; and

WHEREAS, due notice of said proposal to amend such vacation ordinance and to amend such lease was given as provided by law, setting forth the time and place for hearing on said proposals; and

WHEREAS, in accordance with said notice, those interested in said proposed amendment of Ordinance No. 15, 014 and amendment of Lease Agreement, 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, that:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed amendment to vacation ordinance and amendment of lease of such public real property as described above are hereby overruled and the hearing is closed.

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2. The proposed amendment to Ordinance No. 15,014 is found to be in the public interest and be and is hereby adopted and approved.
3. The proposed amendment to the Lease, Operation, Management and Maintenance Agreement to change terms as described above relating to the Metro Net communication system fiber infrastructure, including relocation of such on the leased premises, and reimbursement to lessee Greater des Moines Botanical Garden for costs of the installation of a fire hydrant for up to \$18,500, be and is hereby approved.
4. The Mayor is authorized and directed to sign said lease amendment as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of the ordinance amending Ordinance No. 15,014, the City Clerk is authorized and directed to forward the original of the lease amendment, 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. Upon execution of said lease amendment, the Real Estate Division of the Engineering Department is authorized and directed to forward the original of the said lease amendment, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing said documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division shall file the original of the lease amendment and send copies to the City Clerk, the Land Records Clerk and to the Greater Des Moines Botanical Garden.

(Council Communication 12-625)

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

Ann DiDonato
 Ann DiDonato
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

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