

Date June 8, 2015

**SET HEARING FOR VACATION OF SURFACE AND SUBSURFACE RIGHTS IN PORTIONS OF 4<sup>TH</sup> STREET, COURT AVENUE AND 5<sup>TH</sup> AVENUE ADJOINING 420 COURT AVENUE AND CONVEYANCE OF SURFACE AND SUBSURFACE EASEMENTS TO 420 COURT AVENUE, LLC FOR \$15,280.00**

**WHEREAS**, on May 18, 2015, by Roll Call No. 15-0805, the City Council received a recommendation from the City Plan and Zoning Commission that portions of 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue rights-of-way adjoining 420 Court Avenue (herein collectively "City Right-of-Way"), be vacated to allow for the construction, repair and maintenance of vendor area screen wall footings, café patio retaining wall footings, patio screen wall and guard rail footings, and a loading area screen wall and footings as part of the construction and maintenance of a 4-story mixed-use development proposed by 420 Court Avenue, LLC to be constructed on the real property locally known as 420 Court Avenue; and

**WHEREAS**, 420 Court Avenue, LLC is currently negotiating the terms of a development agreement with the City of Des Moines which includes the purchase of the real property locally known as 420 Court Avenue, which property abuts the City Right-of-Way; and

**WHEREAS**, 420 Court Avenue, LLC has offered to the City of Des Moines the purchase price of \$15,280.00 for the vacation of the City Right-of-Way and purchase of surface and subsurface encroachment easement interests in the 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue rights-of-way, for the purposes described above, which purchase price reflects the fair market value of the easements as currently estimated by the City's Real Estate Division; and

**WHEREAS**, the vacation and conveyance is subject to 420 Court Avenue, LLC closing on and providing proof of ownership of the real property located at 420 Court Avenue, and subject to the requirements of the City Plan and Zoning Commission recommendation dated May 14, 2015 and presented to the Des Moines City Council on May 18, 2015; and

**WHEREAS**, the City will not be inconvenienced by the vacation and conveyance of subsurface and surface easement interests in the right-of-way as described herein; and

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

1. That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating portions of 4<sup>th</sup> Street, Court Avenue and 5<sup>th</sup> Avenue rights-of-way adjoining 420 Court Avenue, more specifically described as follows:

**SUBSURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Subsurface Rights Easement below grade and across the portion of the Court Avenue right-of-way, the Southwest 4<sup>th</sup> Street right-of-way, and the southwest 5<sup>th</sup> Avenue right-of-way, described as follows:



Roll Call Number

15-0908

Agenda Item Number

19

Page 2

Date June 8, 2015

ALL THAT PART OF COURT AVENUE AND SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND NORTH AND EAST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 74°13'02" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF COURT AVENUE, 152.99 FEET; THENCE NORTH 15°46'58" WEST, 2.00 FEET; THENCE NORTH 74°13'02" EAST, 155.00 FEET; THENCE SOUTH 15°22'54" EAST, 100.00 FEET; THENCE SOUTH 74°37'06" WEST, 2.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET; THENCE NORTH 15°22'54" WEST ALONG SAID WEST LINE, 97.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (506 S.F.).

AND

ALL THAT PART OF SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 8 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°22'54" WEST ALONG SAID WEST LINE, 115.00 FEET; THENCE NORTH 74°37'06" EAST, 3.00 FEET; THENCE SOUTH 15°22'54" EAST, 115.00 FEET; THENCE SOUTH 74°37'06" WEST, 3.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (345 S.F.).

AND

ALL THAT PART OF SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 15°22'54" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 85.00 FEET; THENCE SOUTH 74°37'06" WEST, 1.50 FEET; THENCE NORTH 15°22'54" WEST, 85.00 FEET; THENCE NORTH 74°37'06" EAST, 1.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (128 S.F.).

AND

ALL THAT PART OF SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN



**Roll Call Number**

15-0908

**Agenda Item Number**

19

Date June 8, 2015

AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**SURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Surface Rights Easement above grade and across the southwest 5<sup>th</sup> Avenue right-of-way, described as follows:

ALL THAT PART OF SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

- 2. That if the City Council decides to vacate the above described rights-of-way, the City of Des Moines proposes to convey subsurface and surface encroachment easements in such vacated City Right-of-Way, as described below, to 420 Court Avenue, LLC for \$15,280.00, subject to all conditions set forth in the above-described Plan and Zoning Commission recommendation:

**SUBSURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Subsurface Rights Easement below grade and across the portion of the vacated Court Avenue right-of-way, the vacated Southwest 4<sup>th</sup> Street right-of-way, and the vacated southwest 5<sup>th</sup> Avenue right-of-way, described as follows:



Roll Call Number

15-0908

Agenda Item Number

19

Page 4

Date June 8, 2015

ALL THAT PART OF VACATED COURT AVENUE AND VACATED SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND NORTH AND EAST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 74°13'02" WEST ALONG THE SOUTH RIGHT-OF-WAY LINE OF COURT AVENUE, 152.99 FEET; THENCE NORTH 15°46'58" WEST, 2.00 FEET; THENCE NORTH 74°13'02" EAST, 155.00 FEET; THENCE SOUTH 15°22'54" EAST, 100.00 FEET; THENCE SOUTH 74°37'06" WEST, 2.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET; THENCE NORTH 15°22'54" WEST ALONG SAID WEST LINE, 97.99 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (506 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 4TH STREET RIGHT-OF-WAY LYING ADJACENT TO AND EAST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 8 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTHWEST 4TH STREET, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 15°22'54" WEST ALONG SAID WEST LINE, 115.00 FEET; THENCE NORTH 74°37'06" EAST, 3.00 FEET; THENCE SOUTH 15°22'54" EAST, 115.00 FEET; THENCE SOUTH 74°37'06" WEST, 3.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (345 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK 20 OF FORT DES MOINES; THENCE SOUTH 15°22'54" EAST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 90.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 85.00 FEET; THENCE SOUTH 74°37'06" WEST, 1.50 FEET; THENCE NORTH 15°22'54" WEST, 85.00 FEET; THENCE NORTH 74°37'06" EAST, 1.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (128 S.F.).

AND

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:



**Roll Call Number**

15-0908

**Agenda Item Number**

19

Date June 8, 2015

COMMENCING AT THE SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

**SURFACE RIGHTS EASEMENT AREA DESCRIPTION:**

A Surface Rights Easement above grade and across the vacated southwest 5<sup>th</sup> Avenue right-of-way, described as follows

ALL THAT PART OF VACATED SOUTHWEST 5TH AVENUE RIGHT-OF-WAY LYING ADJACENT TO AND WEST OF BLOCK 20 OF FORT DES MOINES, AN OFFICIAL PLAT NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 20 OF FORT DES MOINES; THENCE NORTH 15°22'54" WEST ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE, 85.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 74°37'06" WEST, 4.00 FEET; THENCE NORTH 15°22'54" WEST, 60.00 FEET; THENCE NORTH 74°37'06" EAST, 4.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF SOUTHWEST 5TH AVENUE; THENCE SOUTH 15°22'54" EAST ALONG SAID EAST LINE, 60.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (240 S.F.).

PROPERTY SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such subsurface and surface encroachment easements are to be considered shall be on June 22, 2015, 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.
4. That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

★ Roll Call Number  
15-0908

Agenda Item Number  
19

Date June 8, 2015

Moved by Gatto to adopt.

APPROVED AS TO FORM:

[Signature]  
 Lisa A. Wieland, Assistant City Attorney

*ESW*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GREY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
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.

[Signature] City Clerk