



**Roll Call Number**

16-0557

**Agenda Item Number**

16

**Date** April 11, 2016

**RESOLUTION AUTHORIZING AND APPROVING PARTIAL RELEASE OF PERMANENT NO-BUILD EASEMENT RESERVATION OVER A PORTION OF VACATED ALLEY RIGHT-OF-WAY ADJOINING 4 JACKSON AVENUE FOR \$3,661**

**WHEREAS**, on September 14, 2015, by Roll Call No. 15-1504, the City Council of the City of Des Moines, Iowa, received and filed a recommendation from the City Plan and Zoning Commission that a segment of the north/south alley right-of-way between Southwest 1st Street and South Union Street, from Jackson Avenue to a point 143 feet to the south adjoining 4 Jackson Avenue ("City Right-of-Way"), be vacated, as requested by Neighborhood Development Corporation, for redevelopment; and

**WHEREAS**, on September 14, 2015, by Roll Call No. 15-1510, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the City Right-of-Way be set down for hearing on September 28, 2015, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, on September 28, 2015, by Roll Call No. 15-1637, the City Council of the City of Des Moines, Iowa, approved the vacation and conveyance of such City Right-of-Way in addition to other segments of right-of-way to Neighborhood Development Corporation for \$83,260.00; and

**WHEREAS**, on September 28, 2015, the City of Des Moines, Iowa ("City"), executed a Quit Claim Deed conveying the City Right-of-Way to Indy East, LLC, successor in interest to Neighborhood Development Corporation, said Quit Claim Deed being subsequently recorded in the office of the Recorder of Polk County, Iowa on November 5, 2015 in Book 15798, Pages 633-643 and containing the reservation by City of a permanent no-build easement prohibiting the construction of any structure, building or other improvement over or within a specific portion of the City Right-of-Way depicted in Exhibit 1 of the Affidavit filed of record in the office of the Recorder of Polk County, Iowa, in Book 15873 Page 652, on January 20, 2016, until such time as Buyer pays to the City of Des Moines, Iowa, the difference between the full Fair Market Value of the City Right-of-Way (\$3.10 per square foot) and the restricted Fair Market Value paid by Buyer (\$1.55 per square foot) and upon the written release of said no-build restriction by the City; and

**WHEREAS**, South Union Corner, L.L.C., successor in interest to Indy East, LLC, has agreed to pay City Three Thousand Six Hundred Sixty-one dollars (\$3,661.00) for the partial release of the permanent no-build easement from a portion of said City Right-of-Way, more particularly described below; said amount being the difference between the full Fair Market Value of the City Right-of-Way and the restricted Fair Market Value; and

**WHEREAS**, the City has no need for that portion of the permanent no-build easement in said City Right-of-Way as described below.

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



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1. There is no public need for the property interest described below and the public would not be inconvenienced by reason of the partial release of the City's permanent no-build easement reservation specifically described as follows:

All of the vacated North/South Alley right-of-way in Block 15, South Fort Des Moines, an Official Plat; and

Except the South 121 feet, all of the vacated North/South Alley right-of-way in Block 9, Van's Addition to South Des Moines, an Official Plat,

All now included in and forming a part of the City of Des Moines, Polk County, Iowa, and containing 2,362 square feet.

(VACATED BY ORDINANCE NO. 15,406, PASSED September 28, 2015.)

2. The partial release of such City permanent no-build easement reservation be and is hereby approved.
3. The Mayor is authorized and directed to sign the Partial Release of Permanent No-Build Easement, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. Upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Partial Release of Permanent No-Build Easement, together with a certified copy of this resolution, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
5. The Real Estate Division Manager is authorized and directed to forward the original of the Partial Release of Permanent No-Build Easement, together with a certified copy of this resolution, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
6. Upon receipt of the recorded document back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Partial Release of Permanent No-Build Easement to the grantee.



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(Council Communication No. 16-196)

Moved by Coleman to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

RSW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	7			

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 Council Mayor

Diane Rauh City Clerk