



17-0513

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Date March 20, 2017

**HOLD HEARING FOR VACATION OF A PORTION OF MULBERRY STREET AND 12<sup>TH</sup> STREET RIGHTS-OF-WAY ADJOINING 121 12<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO 12<sup>TH</sup> STREET LOFTS, LLC FOR \$2,000.00**

**WHEREAS**, on February 20, 2017, by Roll Call No. 17-0265, the City Council of the City of Des Moines, Iowa, received and filed a communication from the City Plan and Zoning Commission recommending approval of a request from 12<sup>th</sup> Street Lofts, LLC for the vacation of a 5-foot by 5-foot segment of Mulberry Street and a 5-foot by 5-foot segment of 12<sup>th</sup> Street rights-of-way adjoining 121 12<sup>th</sup> Street (hereinafter collectively "City Right-of-Way") to allow for two permanent building entrance door swings into the City Right-of-Way, subject to planters being placed on each side of the door for the protection of pedestrian traffic when the door is opened.

**WHEREAS**, 12<sup>th</sup> Street Lofts, LLC, owner of the adjoining property, 121 12<sup>th</sup> Street, has offered to the City the purchase price of \$2,000.00 for the purchase of a Permanent Easement For Building Encroachment in said City Right-of-Way, hereinafter more fully described, to allow for encroachment into the City Right-of-Way for two permanent building entrance door swings, which price reflects the fair market value of the City Right-of-Way as determined by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the right-of-way proposed to be vacated and sold, and the public would not be inconvenienced by reason of the vacation and sale of said City Right-of-Way; and

**WHEREAS**, on March 6, 2017, by Roll Call No. 17-0366, it was duly resolved by the City Council of the City of Des Moines, Iowa, that said proposed vacation and conveyance be set down for hearing on March 20, 2017, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of the proposal to vacate a portion of said City Right-of-Way and convey a Permanent Easement For Building Encroachment was given 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 conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.

**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, any and all objections to said proposed vacation and conveyance of the Permanent Easement For Building Encroachment as described below are hereby overruled, and the hearing is closed.
2. There is no public need or benefit for the City Right-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a portion of Mulberry Street and 12<sup>th</sup> Street rights-of-way adjoining 121 12<sup>th</sup> Street, more specifically described as follows:

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**12<sup>th</sup> Street**

Commencing at the Northwest corner of said Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence South 15°26'05" East, 67.17 feet along the East right-of-way line of said 12<sup>th</sup> Street, also being West line of said Block 23, to the Point of Beginning; thence continuing South 15°26'05" East, 5.00 feet along the East right-of-way line of said 12<sup>th</sup> Street; thence South 74°33'55" West, 5.00 feet; thence North 15°26'05" West, 5.00 feet; thence North 74°33'55" East, 5.00 feet to the point of beginning.

Containing 25.00 square feet.

**Mulberry Street**

Commencing at the Northwest corner of said Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence North 74°14'27" East, 43.48 feet along the South right-of-way line of said Mulberry Street, also being North line of said Block 23, to the Point of Beginning; thence North 15°45'33"W, 5.00 feet; thence North 74°14'27 East, 5.00 feet; thence South 15°45'33" East, 5.00 feet to the South right-of-way line of said Mulberry Street; thence South 74°14'27" West, 5.00 feet along the South right-of-way line of said Mulberry Street to the point of beginning.

Containing 25.00 square feet.

3. That the sale and conveyance of a Permanent Easement For Building Encroachment within said vacated Mulberry Street and 12<sup>th</sup> Street right-of-way, as described below, to 12<sup>th</sup> Street Lofts, LLC, for \$2,000.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, subject to planters being placed on each side of the door for the protection of pedestrian traffic when the door is opened be and is hereby approved:

**12<sup>th</sup> Street**

Commencing at the Northwest corner of said Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence South 15°26'05" East, 67.17 feet along the East right-of-way line of said 12<sup>th</sup> Street, also being West line of said Block 23, to the Point of Beginning; thence continuing South 15°26'05" East, 5.00 feet along the East right-of-way line of said 12<sup>th</sup> Street; thence South 74°33'55" West, 5.00 feet; thence North 15°26'05" West, 5.00 feet; thence North 74°33'55" East, 5.00 feet to the point of beginning.

Containing 25.00 square feet.

**Mulberry Street**

Commencing at the Northwest corner of said Block 23 of KEENE & POINDEXTER'S ADDITION TO FORT DES MOINES; thence North 74°14'27" East, 43.48 feet along the South right-of-way line of said Mulberry Street, also being North line of said Block 23, to the Point of Beginning; thence North 15°45'33"W, 5.00 feet; thence North 74°14'27 East, 5.00 feet; thence South 15°45'33" East, 5.00 feet to the South right-of-way line of said Mulberry

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Street; thence South 74°14'27" West, 5.00 feet along the South right-of-way line of said Mulberry Street to the point of beginning.

Containing 25.00 square feet.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Building Encroachment for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating said City Right-of-Way and 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 Permanent Easement for Building Encroachment, 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. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

(Council Communication No. 17-305)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland  
 Lisa A. Wieland, Assistant City Attorney

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.

Diane Rauh City Clerk

T. M. Franklin Mayor