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17-1411

Agenda Item Number

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**HOLD HEARING FOR VACATION OF PORTIONS OF SOUTHEAST 6<sup>TH</sup> STREET AND SOUTHEAST 7<sup>TH</sup> STREET BETWEEN VACATED EAST MARKET STREET AND VACATED EAST ELM STREET AND CONVEYANCE OF BUILDING ENCROACHMENT EASEMENTS; AND CONVEYANCE OF A PORTION OF PREVIOUSLY VACATED EAST MARKET STREET RIGHT-OF-WAY BETWEEN SOUTHEAST 6<sup>TH</sup> STREET AND SOUTHEAST 7<sup>TH</sup> STREET, TO DISTRICT AT 6<sup>TH</sup>, LLC AND ACCEPTANCE OF A PERMANENT EASEMENT FOR PUBLIC INGRESS AND EGRESS OVER PROPERTY OWNED BY DISTRICT AT 6<sup>TH</sup>, LLC**

**WHEREAS**, District at 6th, LLC is the owner of the real property locally known as 201 Southeast 6<sup>th</sup> Street, Des Moines, Iowa, which property is being developed with a new 5-story residential apartment building with below grade off street parking; and

**WHEREAS**, District at 6th, LLC has requested the vacation of surface rights and subsurface rights in portions of Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street adjoining 201 Southeast 6<sup>th</sup> Street, ("City Right-of-Way"), hereinafter more fully described; and has further requested that the City of Des Moines, Iowa ("City") convey unto District at 6th, LLC a Permanent Easement for Subsurface Building Encroachment, and a Permanent Easement for Building Encroachment in the City Right-of-way, hereinafter more fully described, in order to allow for subsurface building footing encroachments and surface stair and stair rail encroachments into the City Right-of-Way; and

**WHEREAS**, District at 6th, LLC has further requested that the City convey unto District at 6th, LLC the south 66 feet of the west 150 feet of Vacated East Market Street located north of and adjoining 201 Southeast 6<sup>th</sup> Street to allow for construction of a pedestrian plaza; and

**WHEREAS**, District at 6th, LLC has offered to convey unto the City of Des Moines, Iowa a Permanent Easement for Public Ingress and Egress in the south 66 feet of Vacated East Market Street between Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street, in exchange for the conveyance of said portion of previously vacated East Market Street and said permanent building encroachment easements in the vacated City Right-of-Way, which is equal to the fair market value for such exchange of property interests, as determined by the City's Real Estate Division; and

**WHEREAS**, the City will not be inconvenienced by the proposed vacation of said City Right-of-Way and conveyance of said portion of East Market Street and the permanent encroachment easement interests in the vacated City Right-of-Way; and

**WHEREAS**, on July 24, 2017, by Roll Call No. 17-1235, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of such easement interests, and conveyance of the south 66 feet of the west 150 feet of Vacated East Market Street, all adjoining 201 Southeast 6<sup>th</sup> Street, in exchange for conveyance of a Permanent Easement for Public Ingress and Egress in the south 66 feet of Vacated East Market Street between Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street by District at 6th, LLC, be set down for hearing on August 14, 2017, at 5:00 p.m., in the Council Chamber; and

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**WHEREAS**, due notice of said proposal to vacate surface rights and subsurface rights in portions of Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street and to convey a Permanent Easement for Subsurface Building Encroachment, and a Permanent Easement for Building Encroachment in the vacated Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street right-of-way adjoining 201 Southeast 6<sup>th</sup> Street; and conveyance of the south 66 feet of the west 150 feet of Vacated East Market Street located north of and adjoining 201 Southeast 6<sup>th</sup> Street, in exchange for conveyance of a Permanent Easement for Public Ingress and Egress in the south 66 feet of Vacated East Market Street between Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street by District at 6th, LLC, 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 conveyances, 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 air space, surface, and subsurface easements 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 surface rights and subsurface rights in portions of Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street right-of-way adjoining 201 Southeast 6<sup>th</sup> Street, more specifically described as follows:

**SUBSURFACE RIGHTS**

THE EAST 2.00 FEET OF THE SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING WEST OF AND ADJACENT TO LOTS 1 THROUGH 5, BLOCK 29, TOWN OF DE MOINE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

And

**SURFACE RIGHTS**

THE WEST 5.00 FEET OF THE SOUTHEAST 7TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJACENT TO LOTS 6 THROUGH 10, BLOCK 29, TOWN OF DE MOINE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

3. That the conveyance of a Permanent Easement for Subsurface Building Encroachment, and a Permanent Easement for Building Encroachment in the vacated Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street right-of-way adjoining 201 Southeast 6<sup>th</sup> Street; and conveyance of the south 66 feet of the west 150 feet of Vacated East Market Street located north of and adjoining 201 Southeast 6<sup>th</sup> Street, as legally





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described as follows, to District at 6th, LLC, in exchange for conveyance to the City of Des Moines, Iowa of a Permanent Easement for Public Ingress and Egress in Vacated East Market Street between Southeast 6<sup>th</sup> Street and Southeast 7<sup>th</sup> Street located north of and adjoining 201 Southeast 6th Street; subject to any and all easements, restrictions, and covenants of record, and further subject to the requirements of the Offer to Purchase and the City Plan and Zoning Commission review, be and is hereby approved:

### **SUBSURFACE BUILDING ENCROACHMENT**

THE EAST 2.00 FEET OF THE VACATED SOUTHEAST 6TH STREET RIGHT-OF-WAY LYING WEST OF AND ADJACENT TO LOTS 1 THROUGH 5, BLOCK 29, TOWN OF DE MOINE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

AND

### **SURFACE BUILDING ENCROACHMENT**

THE WEST 5.00 FEET OF THE VACATED SOUTHEAST 7TH STREET RIGHT-OF-WAY LYING EAST OF AND ADJACENT TO LOTS 6 THROUGH 10, BLOCK 29, TOWN OF DE MOINE, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA

AND

### **VACATED EAST MARKET STREET**

ALL THAT PART OF THE SOUTH 66 FEET OF VACATED EAST MARKET STREET RIGHT OF WAY LYING NORTH OF AND ADJOINING LOT 1, BLOCK 29, TOWN OF DE MOINE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND CONTAINING APPROXIMATELY 9,900 SQUARE FEET.

ALL SUBJECT TO ANY AND ALL EASEMENTS OF RECORD.

4. The Mayor is authorized and directed to sign the Offer to Purchase, Quit Claim Deed, Permanent Easement for Subsurface Building Encroachment, and Permanent Easement for Building Encroachment for the conveyances identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Clerk is hereby authorized and directed to endorse upon the Permanent Easement for Public Ingress and Egress the approval and acceptance of this Council; and is further authorized and directed to deliver all the aforementioned documents to the Real Estate Division Manager, who shall proceed to closing in accordance with standard real estate practices.
6. Upon final passage of an ordinance vacating said surface rights and subsurface rights in portions of said City Right-of-Way and upon proof of payment of the \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Quit Claim Deed and building encroachment easements, together with a certified copy of this resolution and of the affidavit of

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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.

7. The Real Estate Division Manager is authorized and directed to forward the original of the Quit Claim Deed and building encroachment easements, 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.

8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Quit Claim Deed, building encroachment easements and a copy of the Permanent Easement for Public Ingress and Egress to the grantee.

9. There are no proceeds associated with this conveyance.

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Thomas G. Fisher Jr.

Thomas G. Fisher Jr., Assistant City Attorney

PSW

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

MOTION CARRIES

APPROVED

T. M. Funderburk 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 Fauh City Clerk