



Roll Call Number

18-0509

Agenda Item Number

64 B

Date March 19, 2018

**RESOLUTION HOLDING HEARING ON REQUEST FROM CREIGHTON PENNEY D/B/A MID IOWA TOWING TO REZONE A PORTION OF PROPERTY AT 109 EAST 28<sup>TH</sup> STREET**

**WHEREAS**, on March 8, 2018, by Roll Call No. 18-0354, the City Council received a communication from the City Plan and Zoning Commission advising that at a public hearing held on February 15, 2018, its members voted 8-0 in support of a motion to recommend **DENIAL** of a request from Creighton Penney d/b/a Mid Iowa Towing (owner) to rezone property at 109 East 28<sup>th</sup> Street from "M-1" Light Industrial District to "M-2" Heavy Industrial District, to allow the Property to be used for outdoor storage of inoperable vehicles as part of a towing contractor business; and

**WHEREAS**, following said hearing, the applicant amended its request for rezoning to include only that portion of 109 East 28<sup>th</sup> Street identified as Polk County Assessor District/Parcel No. 050/02139-001-002 ("Property") and legally described below; and

**WHEREAS**, on March 8, 2018, by Roll Call No. 18-0354, it was duly resolved by the City Council that the application of Creighton Penney d/b/a Mid Iowa Towing to rezone the Property, legally described as follows, be set down for hearing on March 19, 2018 at 5:00 p.m. in the Council Chamber at the Municipal Service Center:

Lot 65 (except the north 21 feet thereof), Lots 66, 67, 68, and 70, that part of Lot 69 lying north of the north line of Lot 2 Rollins Hoisery Place Replat, an Official Plat; and all that part of the north and south alley which lies between the south line of Lot 65 and the north line of the Chicago Rock Island Pacific Railway Right-of-Way, all in Block J, Hartley's Addition to Grant Park, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa; and

**WHEREAS**, due notice of said hearing was published in the Des Moines Register, as provided by law, setting forth the time and place for hearing on said proposed rezoning; and

**WHEREAS**, in accordance with said notice, those interested in said proposed rezoning, both for and against, have been given 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, as follows:

1. Upon due consideration of the facts and any statements of interested persons and arguments of counsel, any and all comments for and against the proposed rezoning of the Property to "M-2" Heavy Industrial District, to allow the Property to be used for outdoor storage of inoperable vehicles as part of a towing contractor business, are hereby received and filed, and the hearing is closed.



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**Alternative A**

MOVED by Gatto to adopt and **DENY** the proposed rezoning, and to make the following findings of fact regarding the proposed rezoning:

- a. The City Plan and Zoning Commission voted 8-0 to recommend denial of the requested rezoning of the Property to "M-2" Heavy Industrial District, to allow the Property to be used for outdoor storage of inoperable vehicles as part of a towing contractor business.
- b. The PlanDSM: Creating Our Tomorrow Plan future land use designation of the Property is Low Density Residential, which is not in conformance with the proposed Industrial use of the Property as stated above.
- c. If the application of the existing zoning regulations has the effect of denying the owner all economic use of the Property, then the appropriate remedy is to seek relief from the Zoning Board of Adjustment.

**Alternative B**

MOVED by \_\_\_\_\_ to continue the public hearing ~~until April 9, 2018, at 5:00 p.m. in the Council Chambers at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, and to direct the City Manager and Legal Department to prepare the necessary legislation to APPROVE the rezoning subject to conditions acceptable to the City and the owner(s).~~

FORM APPROVED:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

(ZON2018-00008)

NOTE: Six affirmative votes are required to approve the proposed rezoning due to the Plan and Zoning Commission's recommendation for denial. Des Moines City Code §134-4.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
WESTERGAARD	✓			
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