

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A SUBSURFACE PORTION OF EAST 2<sup>ND</sup> STREET RIGHT-OF-WAY ADJOINING 111 EAST GRAND AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT FOR A FATS, OILS AND GREASE (FOG) DISCHARGE INTERCEPTOR TO 111 EAST GRAND, LLC FOR \$5,640.00**

**WHEREAS**, on June 7, 2018, the City of Des Moines Plan and Zoning Commission, voted to recommend approval of request from 111 East Grand, LLC, represented by Tim Rypma (officer) for vacation of the subsurface rights in a 12-foot by 40-foot segment of East 2nd Street right-of-way adjoining 111 East Grand Avenue, Des Moines, Iowa (hereinafter "City Property") to allow for placement of an underground fats, oils and grease (FOG) interceptor to serve the building currently under construction on the adjoining property, subject to the following:

- Termination by the City at any time the easement area should be needed for municipal facilities or improvements.
- Upon termination of the easement by the City, the developer/owner shall remove the FOG Interceptor and related appurtenances at developer/owner's expense.
- The building shall be plumbed at this time and at the developer/owner's expense to allow for future relocation of the FOG interceptor to a location outside the City's Right-of-Way.
- Prior to the City granting the easement within the City's Right-of-Way, the developer/owner shall secure the alternative location for the FOG interceptor; and

**WHEREAS**, 111 East Grand, LLC, owner of 111 East Grand Avenue, has offered to the City the purchase price of \$5,640.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-owned Property (hereinafter "Easement") in said City Property, hereinafter more fully described, to allow for placement of the FOG interceptors into the City Property; which price reflects the fair market value of the Easement as determined by the City's Real Estate Division; and

**WHEREAS**, at this time, there is no public need or benefit for the subsurface rights proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property; and

**WHEREAS**, on June 25, 2018, by Roll Call No. 18-1066, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Permanent Easement for Subsurface Building Encroachment on City-owned Property be set for hearing on July 9, 2018, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to vacate the subsurface rights in the west 2 feet of East 2nd Street right-of-way, and the subsurface rights in an approximately 12-foot by 40-foot segment of East 2nd Street right-of-way adjoining 111 East Grand Avenue, Des Moines, Iowa, and convey a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated right-of-way, was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and



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WHEREAS, in accordance with City Council direction, those interested in the 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.

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 the proposed vacation of an approximately 12-foot by 40-foot segment of East 2nd Street right-of-way adjoining 111 East Grand Avenue, Des Moines, Iowa and conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated right-of-way, as described herein, are hereby overruled and the hearing is closed.

2. At this time, there is no public need or benefit for the subsurface rights within street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said subsurface rights within street right-of-way, legally described as follows, and said vacation is hereby approved:

SUBSURFACE RIGHTS IN THE EAST 2ND STREET PUBLIC RIGHT OF WAY LYING EAST OF AND DIRECTLY ADJACENT TO PARCEL 2016-20, BLOCK 3, EAST FORT DES MOINES, AN OFFICIAL PLAT OF SURVEY RECORDED IN BOOK 15934, PAGE 39, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A POINT BEING THE NORTHEAST CORNER PARCEL 2016-20, OF BLOCK 3, EAST FORT DES MOINES; THENCE S15°21'53"E, 13.33 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL 2016-20; THENCE N74°50'43"E, 8.50 FEET TO THE POINT OF BEGINNING; THENCE N74°50'43"E, 12.00 FEET TO A POINT; THENCE S15°09'17"E, 40.00 FEET TO A POINT; THENCE S74°50'43"W, 20.35 FEET TO A POINT; THENCE N15°09'17"W, 10.00 FEET TO A POINT; THENCE N74°50'43", 8.39 FEET TO A POINT; THENCE N15°09'17"W, 30.00 FEET TO THE POINT OF BEGINNING. ALL CONTAINING 564 SQUARE FEET MORE OR LESS.

3. The proposed conveyance of a Permanent Easement for Subsurface Building Encroachment on City-owned Property in such vacated subsurface rights within street right-of-way, as legally described below to 111 East Grand, LLC for \$5,640.00, subject to reservation of easements therein, and further subject to the City's right to terminate the Easement in the event that the Easement Area is needed for municipal facilities or other public improvements:

SUBSURFACE RIGHTS EASEMENT IN THE VACATED EAST 2ND STREET PUBLIC RIGHT OF WAY LYING EAST OF AND DIRECTLY ADJACENT TO PARCEL 2016-20, BLOCK 3, EAST FORT DES MOINES, AN OFFICIAL PLAT OF SURVEY RECORDED IN BOOK 15934, PAGE 39, AT THE POLK COUNTY RECORDERS OFFICE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A POINT BEING THE NORTHEAST CORNER PARCEL 2016-20, OF BLOCK 3, EAST FORT DES MOINES; THENCE S15°21'53"E, 13.33 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL 2016-20; THENCE N74°50'43"E, 8.50 FEET TO THE POINT OF BEGINNING; THENCE N74°50'43"E, 12.00 FEET TO A POINT; THENCE S15°09'17"E, 40.00 FEET TO A POINT; THENCE S74°50'43"W, 20.35 FEET TO A POINT; THENCE N15°09'17"W, 10.00 FEET TO A POINT; THENCE N74°50'43", 8.39 FEET TO A POINT; THENCE N15°09'17"W, 30.00 FEET TO THE POINT OF BEGINNING. ALL CONTAINING 564 SQUARE FEET MORE OR LESS.

4. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Subsurface Building Encroachment on City-owned Property for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. 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 Subsurface Building Encroachment on City-owned Property, 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 Subsurface Building Encroachment on City-owned Property, together with a certified copy of this resolution and of the affidavit of publication of the 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 Subsurface Building Encroachment on City-owned Property and a copy of the other documents to the grantees.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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(Council Communication No. 18- 356)

Moved by Gatto to adopt.

APPROVED AS TO FORM:

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

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

MOTION CARRIED 7 APPROVED  
T. M. Franklin Mayor