

★ **Roll Call Number**
21-1284

Agenda Item Number
62

Date August 9, 2021

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF A PERMANENT GAS EASEMENT ON CITY-OWNED PROPERTY LOCATED AT 101 EAST 2ND STREET TO MIDAMERICAN ENERGY COMPANY FOR THE E. 2ND STREET RECONSTRUCTION – COURT AVENUE TO IOWA INTERSTATE RAILROAD PROJECT

WHEREAS, MidAmerican Energy Company has been asked by the City of Des Moines to relocate existing gas line structures for the E. 2nd Street Reconstruction – Court Avenue to Iowa Interstate Railroad Project; and

WHEREAS, MidAmerican Energy Company has requested a gas easement across a portion of City-owned property adjoining 101 2nd Street, described below (hereinafter “Property”), in order to accommodate the installation of a gas vent pipe; and

WHEREAS, the City will not be inconvenienced by the conveyance of a Permanent Gas Easement within the Property; and

WHEREAS, on July 19, 2021, by Roll Call No. 21-1105, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance of the Permanent Gas Easement (“Easement”) be set for hearing on July 19, 2021, at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to convey the Easement was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the proposed 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 conveyance of the Permanent Gas Easement as described herein, are hereby overruled and the hearing is closed.
2. The public would not be inconvenienced by reason of the conveyance of the Permanent Underground Electric Easement in property adjoining 101 East 2nd Street, Des Moines, Iowa, legally described as follows, to MidAmerican Energy Company for \$1.00, and said conveyance is hereby approved:

DESCRIPTION OF EASEMENT AREA:



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The South Five (5) Feet of the North Eleven (11) feet of the West Three (3) feet of Lot 2 in Block "I", in Scott and Dean's Addition to Fort Des Moines, an official Plat now included in and forming a part of the City of Des Moines, Polk County, Iowa.

- 3. The Mayor is authorized and directed to sign the Permanent Gas Easement for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
- 4. The City Clerk is authorized and directed to forward the original of the Permanent Gas Easement, 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.
- 5. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Gas Easement, 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.
- 6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Gas Easement and copies of the other documents to the grantee.
- 7. There will be no proceeds associated with the conveyance of this Permanent Gas Easement.

Moved by Gatto to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

PW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED APPROVED

J. M. Frank Cownie Mayor

CERTIFICATE

I, P. Kay Cmelik, 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.

P. Kay Cmelik City Clerk

Prepared by and return to: Aaron O'Boyle 515-281-2579
MIDAMERICAN ENERGY ATTN: RIGHT-OF-WAY SERVICES PO BOX 657 DES MOINES, IA 50306-0657

**MIDAMERICAN ENERGY COMPANY
GAS EASEMENT**

Folder No.	<u>103005</u>	State of	<u>Iowa</u>	
Work Req. No.	<u>2861896</u>	County of	<u>Polk</u>	
Project No.	<u>A5651</u>	Section	<u>03</u>	
		Township	<u>78</u>	North
		Range	<u>24</u>	West of the 5 th P.M.

1. For and in consideration of the sum of One and no/100-----Dollar (\$1.00), and other valuable consideration, in hand paid by MIDAMERICAN ENERGY COMPANY, an Iowa corporation, receipt of which is hereby acknowledged, the undersigned owner(s) City of Des Moines, a municipal corporation, its successors and assigns ("Grantor"), does hereby grant to MIDAMERICAN ENERGY COMPANY, its successors and assigns ("Grantee"), a perpetual, non-exclusive easement to construct, attach, reconstruct, operate, maintain, replace or remove line(s) and facilities for the transportation of natural gas, including but not limited to, meters, valves, support brackets, piping, line markers and other reasonably necessary equipment incident thereto (collectively "Facilities") under, upon and on the surface of the ground, through and across certain property described below, together with the right of ingress and egress to and from the same, and all the rights and privileges incident and necessary to the enjoyment of this easement ("Easement Area"). The Facilities on the Easement Area will be used by Grantee (a public utility) for the purpose of providing public utility service to Grantor at such property and which such utility service is intended for a public purpose.

DESCRIPTION OF PROPERTY CONTAINING EASEMENT AREA:

Lot 2 in Block "I", in Scott and Dean's Addition to Fort Des Moines, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

EASEMENT AREA:

An underground gas easement described as follows:

Said easement area is generally depicted on Exhibit "A", attached hereto and made a part hereof.

2. Additionally, Grantee shall have the right to remove from the Easement Area described above, any obstructions, including but not limited to, trees, plants, undergrowth, buildings, fences and structures that interfere with the proper operation and maintenance of said Facilities and equipment. Prior to removing any trees, buildings, fences or structures that exist on the date of execution of this easement, Grantee will obtain approval from the Municipal Arborist, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, in the event of emergency or other potentially hazardous condition, Grantee shall have the right to remove trees without written approval, that interfere with the proper operation and maintenance of said Facilities and equipment.

3. Grantor agrees that it will not construct or place any permanent or temporary buildings, structures, fences, trees, plants, or other objects on the Easement Area described above, or make any changes in ground elevation without written permission from Grantee indicating that said construction or ground elevation changes will not result in inadequate or excessive ground cover, or otherwise interfere with the Grantee's rights to operate and maintain its Facilities. Notwithstanding the foregoing, Grantor may construct or place enclosures, fencing, landscaping or similar improvements associated with the Facilities that are required by state or city codes, without permission from Grantee, provided such improvements do not compromise required code clearances or interfere with Grantee's rights herein.

4. In consideration of such grant, Grantee agrees that it will repair or pay for any damage which may be caused to crops, fences, or other property, real or personal, of the Grantor by the construction, reconstruction, maintenance, operation, replacement or removal of the Facilities (except for damage to property placed subsequent to the granting of this easement) that Grantee determines interferes with the operation and maintenance of the Facilities and associated equipment. The cutting, recutting, trimming and removal of trees, branches, saplings, brush or other vegetation on or adjacent to the Easement Area, as may be required for the operation and maintenance of facilities and as pre-approved by the Municipal Arborist if such approval is required, is expected and not considered damage to the Grantor.

5. Grantor certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Grantor hereby agrees to defend, indemnify and hold harmless Grantee from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

6. Each of the provisions of this easement shall be enforceable independently of any other provision of this easement and independent of any other claim or cause of action. In the event of any matter or dispute arising out of or related to this easement, it is agreed between the parties that the law of the jurisdiction and location where this easement is recorded (including statute of limitation provisions) will govern the interpretation, validity and effect of this easement without regard to the place of execution or place of performance thereof, or any conflicts of law provisions. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS EASEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

7. Grantor and Grantee will comply with applicable state and local laws and policies in use of this easement.

8. Additionally, when Grantor provides or installs meters, valves, support brackets, piping, line markers for said Facilities, this grant shall cover and include Facilities installed as a part of the Easement Area.

Dated this 9th day of August, 2021

City of Des Moines, Iowa

By: T. M. Franklin Cownie
T. M. Franklin Cownie, Mayor

By: P. Kay Cmelik
P. Kay Cmelik, City Clerk

Approved as to Form:

By: Mia Ireland
Assistant City Attorney

ACKNOWLEDGMENT

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this 9th day of August, A. D. 2021, before me, a Notary Public in and for the State of Iowa, personally appeared T. M. Franklin Cownie and P. Kay Cmelik, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and the City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Roll Call No. 21-1284 of the City Council on the 9th day of August, 2021, and that the Mayor and the City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and it voluntarily executed.

Sandi L. Deery
Notary Public in and for said State



ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Underground Electric Easement and agrees to be bound by the terms set forth above.

MIDAMERICAN ENERGY COMPANY

By: Dehn

Please Print: Dehn Stevens

Title: Vice President Gas Delivery

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This instrument was acknowledged before me on July 19th, 2021, by
Dehn Stevens as Vice President (Gas Delivery) of
MidAmerican Energy Company.

[Signature]
Signature of Notary Public

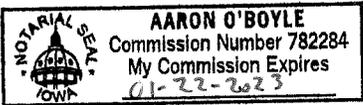


EXHIBIT "A"

Legend

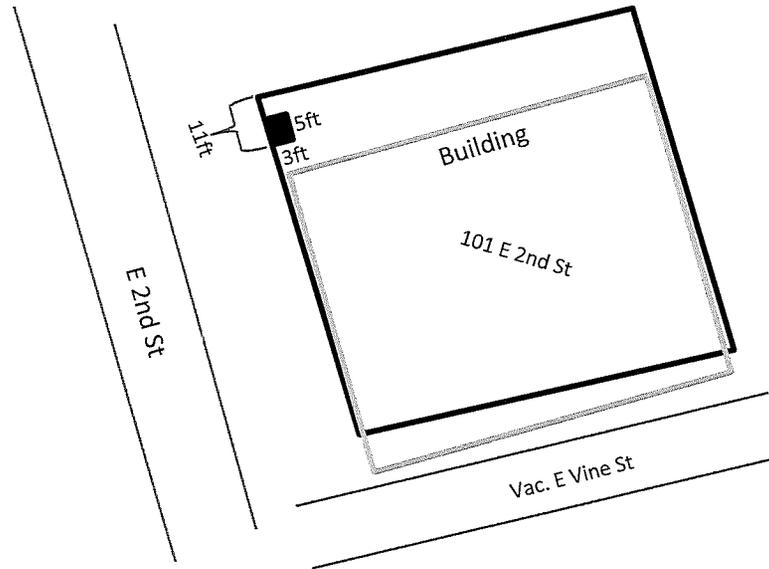
 - Subject Property Line
 -3 ft x 5ft wide Underground Gas Easement

Parcel Legal Description:

Lot 2 in Block "I", in Scott and Dean's Addition to Fort Des Moines, an official Plat now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Easement Area:

The South Five (5) Feet of the North Eleven (11) feet of the West Three (3) feet of the above described parcel.



	Customer: City of Des Moines		Parcel # 7824.03.360.001		
	Address: 101 E 2nd Street		Scale: Not to Scale		Date: 07/22/2021
City: Des Moines		State: Iowa	Folder: 103005-20		Sec 09, T 79N, R25 W
Job Desc: Underground Gas Easement					



DES MOINES, CITY OF
400 ROBERT D RAY DR

DES MOINES IA 503091813

of Affidavits: 1
This is not an invoice

AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

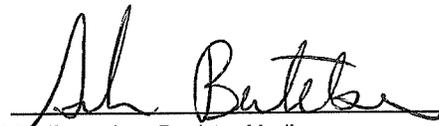
The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register on the following dates:

Ad No.	Start Date:	Run Dates:	Cost:
0004827433	7/22/21	07/22/2021	\$42.94

Copy of Advertisement
Exhibit "A"



Staff member, Register Media

Subscribed and sworn to before me by said affiant this

22 day of July, 2021



Notary Public

1-7-25

Commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

PD1159163 #42.94

REGISTER ORDER NO. 11596
ROLL CALL LEGAL
BULLETIN BOARD FOLLOW
UP

21-1284

NOTICE OF PROPOSAL TO
CONVEY EASEMENT IN
CITY-OWNED REAL ESTATE
NOTICE IS HEREBY GIVEN that
the City Council has adopted a
resolution relating to a proposal to
grant a permanent gas easement
across a portion of City-owned
property adjoining 101 East 2nd
Street to MidAmerican Energy
Company for \$1 and in order to
accommodate the relocation of a
gas vent pipe due to a city
construction project, said
easement being further described
as follows:

The South Five (5) Feet of the
North Eleven (11) feet of the West
Three (3) feet of Lot 2 in Block
"1" in Scott and Dean's Addition
to Fort Des Moines, an official
Plat now included in and forming
a part of the City of Des Moines,
Polk County, Iowa.

NOTICE IS FURTHER GIVEN
that the City Council will consider
the proposed conveyance after a
public hearing to be held at 5:00
p.m. August 9, 2021 in the City
Council Chamber, City Hall, 400
Robert D. Ray Drive, Des Moines,
Iowa. At that time the City
Council will consider the
above-described proposal and any
other(s) submitted prior to or
during the public hearing. Persons
interested in the proposal will be
given the opportunity to express
their views at that hearing. In
addition, the City Council shall
receive written views, comments,
objections and arguments from
any resident or taxpayer of the
City that are received by the City
Clerk prior to 5:00 p.m. August 5,
2021 (City Clerk's Office, Des
Moines City Hall, 400 Robert D.
Ray Drive, 1st Floor, Des Moines,
IA 50309; Email
cityclerk@dmgov.org).

Please check the posted agenda in
advance of the August 9, 2021
meeting for any update on the
manner in which the public
hearing will be conducted to
comply with COVID-19 social
distancing and safety guidelines.
Published in the Des Moines
Register on July 22, 2021.

P011596j \$42.94