



**Roll Call Number**

22-0777

**Agenda Item Number**

13

**Date** May 23, 2022

**SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF ALLEY RIGHT-OF-WAY LOCATED NORTH OF AND ADJOINING 206 6<sup>TH</sup> AVENUE AND APPROVAL OF A LICENSE AGREEMENT WITH ND 22 FLEMING LLC AND 206 6<sup>TH</sup> AVENUE, LLC**

**WHEREAS**, on January 10, 2022, by Roll Call No. 22-0039, the City Council of the City of Des Moines, received and filed a recommendation from the City Plan and Zoning Commission to approve a City-initiated request to vacate a portion of the east-west alley segment located west of 6<sup>th</sup> Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6<sup>th</sup> Street to the north, 606 Walnut Street to the west and 206 6<sup>th</sup> Avenue to the south, hereinafter “Property”, subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning and Urban Design Administrator; and
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated; and

**WHEREAS**, the Property has been the focus of numerous citizen complaints regarding illicit and illegal activities; and

**WHEREAS**, the City’s Real Estate Division has negotiated a License Agreement (“Agreement”) with ND 22 Fleming, LLC, owner of 218 6<sup>th</sup> Street, and 206 6<sup>th</sup> Avenue, LLC, owner of 206 6<sup>th</sup> Avenue, (hereinafter “Licensees”) for the installation and maintenance of a gate/fence across the east entrance to the Property which will allow the Licensees to control access to the Property, which Agreement will include, among other terms, the following:

1. A twenty (20) year license term (Initial Term) with the unilateral right to renew the Agreement for one additional twenty (20) year term (Renewal Term);
2. A one-time lump sum payment of Two Hundred Dollars (\$200.00) for the Initial Term of the agreement; and a one-time lump sum payment of Four Hundred Dollars (\$400.00) for the Renewal Term of the Agreement, which amounts reflect the limited fair market value of the licensed area as currently estimated by the City’s Real Estate Division;
3. The License is given subject to all existing easements and encroachments therein, including but not limited to an ingress/egress easement and a building setback easement;
4. A six (6) foot clear and unobstructed pedestrian pathway must be maintained within said sidewalk right-of-way at all times;
5. Termination by either party for any reason upon sixty (60) days written notice to the other party; and

**WHEREAS**, there is no known current or future public need or benefit for the right-of-way proposed to be vacated and licensed, and the City will not be inconvenienced by the vacation and license of said Property.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:



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1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating a portion of the east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated, and legally described as follows:

-EXCEPT the West 66 feet-, All of the East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa,

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 37.72 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 4.00 feet along the North line of said Lot 6; thence North 15°46'31" West, 4.00 feet; thence North 74°13'29" East, 4.00 feet; thence South 15°46'31" East, 4.00 feet to the Point of Beginning-

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South



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74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-

and containing approximately 1,007 Square Feet.

2. The City Council of the City of Des Moines, Iowa, further proposes to license a portion of the vacated east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6<sup>th</sup> Street to the north, 606 Walnut Street to the west and 206 6<sup>th</sup> Avenue to the south, as legally described below, to ND 22 Fleming, LLC and 206 6th Avenue, LLC for \$200 for the Initial Term, subject to reservation of easements therein, and further subject to all terms and conditions contained in the Agreement:

**-EXCEPT** the West 66 feet-, All of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa,

**-EXCEPT** Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-

AND

**-EXCEPT** Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 37.72 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 4.00 feet along the North line of said Lot 6; thence North 15°46'31" West, 4.00 feet; thence North 74°13'29" East, 4.00 feet; thence South 15°46'31" East, 4.00 feet to the Point of Beginning-

AND

**-EXCEPT** Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast



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corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning,

and containing approximately 1,007 Square Feet.

3. That the meeting of the City Council at which the adoption of said ordinance and the approval of such license of the vacated right-of-way is to be considered shall be on June 13, 2022, at 5:00 p.m. 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.

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. June 9, 2022 (City Clerk's Office, Des Moines City Hall, 400 Robert D. Ray Drive, 1st Floor, Des Moines, IA 50309; Email [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org)).

Please check the posted agenda in advance of the June 13, 2022 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.

4. The City Clerk is hereby authorized and directed to publish notice of said proposal and hearing in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.

5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



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Moved by Boesen to adopt. Second by Mandelbaum.

APPROVED AS TO FORM:

/s/Mackenzie L. Moreno
Mackenzie L. Moreno, Assistant City Attorney

OK

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, MANDELBAUM, SHEUMAKER, VOSS, WESTERGAARD, and TOTAL.

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.

Handwritten signature of J. M. Franklin Cownie, Mayor

Handwritten signature of P. Kay Cmelik, City Clerk