

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF A PORTION OF SE 6<sup>TH</sup> STREET RIGHT-OF-WAY ADJOINING 2428 SE 6<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO JERRY F. MILLER AND BARBARA L. MILLER IN EXCHANGE FOR PROPERTY RIGHTS GRANTED TO THE CITY FOR THE 2023 NEIGHBORHOOD SIDEWALK PROGRAM**

**WHEREAS**, on October 3, 2022, by Roll Call No. 22-1501, the City Council of the City of Des Moines authorized the acquisition of the necessary property interests for the 2023 Neighborhood Sidewalk Program Project (hereinafter "Project"); and

**WHEREAS**, as part of the Project, the City acquired a Temporary Easement for Construction and Construction-Related Activities over a portion of the property located at 2428 SE 6<sup>th</sup> Street, Des Moines, Iowa from Jerry F. Miller and Barbara L. Miller, the owners of said property; and

**WHEREAS**, when the property at 2428 SE 6<sup>th</sup> Street was surveyed for the Project, it was discovered that the existing building encroaches slightly into the adjoining SE 6<sup>th</sup> Street right-of-way; and

**WHEREAS**, the City's Real Estate Division negotiated a settlement with the property owners that included the provision that the City would vacate and convey a Permanent Easement for Building Encroachment ("Easement") on the portion of SE 6<sup>th</sup> Street right-of-way encumbered by the existing building to Jerry F. Miller and Barbara L. Miller in exchange for the Temporary Easement for Construction and Construction-Related Activities needed for the Project; and

**WHEREAS**, the request to vacate and convey a Permanent Easement for Building Encroachment on the SE 6<sup>th</sup> Street right-of-way was not presented to the City's Plan and Zoning Commission for review and has instead been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b), Des Moines, Iowa, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated and further subject to the condition that the easement shall terminate and the rights revert to the City in the event of destruction of the existing structure; and

**WHEREAS**, there is no known current or future public need or benefit for the Property, and the City will not be inconvenienced by the vacation of said property and the conveyance of the Easement in such vacated right-of-way; and

**WHEREAS**, on May 20, 2024, by Roll Call No. 24-0735, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the SE 6<sup>th</sup> Street right-of-way and conveyance of the Permanent Easement for Building Encroachment be set for hearing on June 3, 2024, 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 SE 6<sup>th</sup> Street right-of-way and convey the

Date June 3, 2024

Easement was given 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 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 a portion of SE 6<sup>th</sup> Street right-of-way located east of and adjoining 2428 SE 6<sup>th</sup> Street, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the SE 6<sup>th</sup> Street right-of-way located east of and adjoining 2428 SE 6<sup>th</sup> Street, legally described as follows, and said vacation is hereby approved:

A PORTION OF SOUTHEAST 6TH STREET RIGHT OF WAY, ADJOINING LOT 4, TALLMADGE'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH 81.26 FEET OF THE NORTH 171.26 FEET OF THE EAST 155.34 FEET OF SAID LOT 4; THENCE NORTH 00°34'08" WEST, 32.53 FEET ON THE EAST LINE OF SAID LOT 4; THENCE NORTH 89°25'52" EAST, 3.00 FEET; THENCE SOUTH 00°34'08" EAST, 32.58 FEET; THENCE NORTH 89°34'12" WEST, 3.00 FEET TO THE POINT OF BEGINNING CONTAINING 98 SQUARE FEET, MORE OR LESS.

3. The proposed conveyance of the Permanent Easement for Building Encroachment in such vacated street right-of-way, as legally described below, in exchange for the Temporary Easement for Construction and Construction-Related Activities required for the 2023 Neighborhood Sidewalk Program Project, to Jerry F. and Barbara L. Miller, subject to the reservation of easements for all existing utilities in place, until such time that they are abandoned or relocated, and further subject to the condition that the easement shall terminate and the rights revert to the City in the event of destruction of the existing structure, is hereby approved:

A PORTION OF VACATED SOUTHEAST 6TH STREET RIGHT OF WAY, ADJOINING LOT 4, TALLMADGE'S SUBDIVISION, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTH 81.26 FEET OF THE NORTH 171.26 FEET OF THE EAST 155.34 FEET OF SAID LOT 4; THENCE NORTH 00°34'08" WEST, 32.53 FEET ON THE EAST LINE OF SAID LOT 4; THENCE NORTH 89°25'52" EAST, 3.00 FEET; THENCE SOUTH 00°34'08" EAST, 32.58 FEET; THENCE NORTH 89°34'12" WEST, 3.00 FEET TO THE POINT OF BEGINNING CONTAINING 98 SQUARE FEET, MORE OR LESS.

4. The Mayor is authorized and directed to sign the Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, 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 Easement for Building Encroachment and a copy of the other documents to the grantee.
7. There will be no proceeds associated with the conveyance of this easement.

Moved by Gatto to adopt. Second by Simonson.

APPROVED AS TO FORM:

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

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN	✓			
SIMONSON	✓			
VOSS	✓			
COLEMAN	✓			
WESTERGAARD	✓			
MANDELBAUM	✓			
GATTO	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

Connie Boesen Mayor

CERTIFICATE

I, Laura Baumgartner, 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.

Laura Baumgartner  
Laura Baumgartner, City Clerk