

**Date** March 24, 2025

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**SET HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SUBSURFACE  
AND SURFACE RIGHTS WITHIN PORTIONS OF MULBERRY STREET  
RIGHT-OF-WAY ADJOINING 1435 MULBERRY STREET AND CONVEYANCE OF A  
PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON  
CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING  
ENCROACHMENT - DOOR SWING TO 1435 MULBERRY LLC FOR \$14,750.00**

**WHEREAS**, on December 18, 2023, by Roll Call No. 23-1757, the City Council of the City of Des Moines, Iowa, received and filed a recommendation from the City Plan and Zoning Commission to approve a request from 1435 Mulberry LLC for the vacation of approximately 1,444 square feet subsurface rights within the Mulberry Street right-of-way adjoining 1435 Mulberry Street (“Property”) to allow for the encroachment of proposed building footings, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated at applicant’s expense; and

**WHEREAS**, 1435 Mulberry LLC, the owner of 1435 Mulberry Street, has also requested that the City of Des Moines, Iowa (“City”) vacate surface rights within a portion of Mulberry Street right-of-way adjoining said Property, which request 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); and

**WHEREAS**, 1435 Mulberry LLC has offered to the City the purchase price of \$14,750.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing (“Easements”) over, through and across portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing building footings and door swing area for the residential building being constructed on the property, which price reflects the fair market value of the Easements as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need for the street right-of-way proposed to be vacated, 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.

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

1. That the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating subsurface and surface rights in portions of Mulberry Street right-of-way adjoining 1435 Mulberry Street, legally described as follows:

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**SUBSURFACE RIGHTS**

A 3.75 FEET WIDE STRIP OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'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.

AND

ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'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 (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 7 IN BLOCK 39 OF J. LYON'S ADDITION TO FORT DES MOINES ON THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°(DEGREES) 09'(MINUTES) 48"(SECONDS) EAST, 47.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 74°09'48" EAST, 385.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID MULBERRY STREET; THENCE SOUTH 15°50'12" EAST, 3.75 FEET; THENCE SOUTH 74°09'48" WEST, 385.00 FEET; THENCE NORTH 15°50'12" WEST, 3.75 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,444 SQUARE FEET, MORE OR LESS.



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**SURFACE RIGHTS**

PART OF MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT; THENCE SOUTH 74°(DEGREES) 09'(MINUTES) 48"(SECONDS) WEST, 37.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING; THENCE SOUTH 15°50'12" EAST, 2.00 FEET; THENCE SOUTH 74°09'48" WEST, 6.00 FEET; THENCE NORTH 15°50'12" WEST, 2.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET; THENCE NORTH 74°09'48" EAST, 6.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF MULBERRY STREET TO THE POINT OF BEGINNING. CONTAINING 12.00 SQUARE FEET.

2. The City Council of the City of Des Moines, Iowa, further proposes to convey a Permanent Easement for Subsurface Building Encroachment on City-Owned Property and a Permanent Easement for Building Encroachment - Door Swing in such vacated right-of-way, as legally described below, to 1435 Mulberry LLC for \$14,750.00, subject to any and all easements, restrictions and covenants of record:

**PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT  
ON CITY-OWNED PROPERTY**

A 3.75 FEET WIDE STRIP OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING THE FOLLOWING DESCRIBED PROPERTY:

LOT FOUR (4) IN KEENE AND POINDEXTER'S OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

LOTS SEVEN (7), EIGHT (8), NINE (9), TEN (10) AND ELEVEN (11) IN BLOCK THIRTY-NINE (39) IN J. LYON'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.



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ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING TO THE EAST LINE OF LOT 8; AND ALSO ALL THAT PART OF THE VACATED 16.5 FOOT WIDE NORTH-SOUTH ALLEY THAT LIES EAST OF AND ADJOINING THE EAST LINE OF LOT 10; ALL IN BLOCK 39 IN J. LYON'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 (BOTH VACATED BY ORDINANCE NO. 8066, ENACTED OCTOBER 5, 1970).

SAID STRIP OF VACATED RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 1,444 SQUARE FEET, MORE OR LESS.

**PERMANENT EASEMENT FOR BUILDING ENCROACHMENT - DOOR SWING**

PART OF VACATED MULBERRY STREET RIGHT-OF-WAY LYING SOUTH OF AND ADJOINING LOT 4 IN KEENE AND POINDEXTER OFFICIAL PLAT, AND THAT PART OF VACATED WEST 14TH STREET ADJOINING SAID LOT 4 ON THE WEST, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA. SAID PART OF VACATED MULBERRY STREET RIGHT-OF-WAY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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NORTH RIGHT-OF-WAY LINE OF SAID VACATED MULBERRY STREET TO THE POINT OF BEGINNING. CONTAINING 12.00 SQUARE FEET.

3.

That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such right-of-way is to be considered shall be on April 7, 2025, said meeting to be held 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. Persons interested in the proposal will be given the opportunity to express their views at that hearing.
4.

That the City Clerk is hereby authorized and directed to publish notice of said proposal in the form hereto attached all in accordance with §362.3 of the Iowa Code.
5.


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

Moved by Gatto to adopt. Second by Coleman

APPROVED AS TO FORM:

/s/ Grant Hyland

Grant Hyland, Assistant City Attorney

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