

ORDINANCE NO. 15,219

AN ORDINANCE vacating City-owned right-of-way located at Hull Avenue between Delaware Avenue and Dixon Street; Scott Avenue between Southeast 20th Street and Southeast 22nd Street; and Southeast 34th Street between Scott Avenue and East Court Avenue.

WHEREAS, all prior requirements of law pertaining to the vacation of public right-of-way have been fully observed, including public hearing following publication of notice thereof; and

WHEREAS, it is desirable that the public right-of-way herein described be vacated, and said right-of-way has been determined by the City Council to be of no benefit to the public, subject to the conditions set forth herein;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Sec. 1. There is no public need for or benefit from the right-of-way proposed to be vacated, and the City would not be inconvenienced by reason of the vacation of City-owned right-of-way located at Hull Avenue (a/k/a East Hull Avenue) between Delaware Avenue and Dixon Street, more specifically described as follows, and vacation of said right-of-way is hereby approved and said right-of-way is hereby vacated, to be effective upon fulfillment of the terms and conditions set forth in this Section.

(A) Legal Description of Right-of-Way.

EAST HULL AVENUE

THAT PORTION OF EAST HULL AVENUE RIGHT-OF-WAY THAT CROSSES THE UNION PACIFIC RIGHT-OF-WAY BETWEEN DIXON STREET AND DELAWARE AVENUE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M.; THENCE SOUTH 89⁰(DEGREES)57'(MINUTES) 28"(SECONDS) WEST, 351.37 FEET ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 25 TO THE POINT OF BEGINNING AT THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 00⁰09'40" EAST, 25.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD TO THE SOUTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE; THENCE SOUTH 89⁰57'28" WEST, 100.00 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE TO THE WEST RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD; THENCE NORTH 00⁰09'40" WEST, 50.00 FEET ALONG THE WEST RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE NORTH RIGHT-OF-WAY OF EAST HULL AVENUE; THENCE NORTH 89⁰57'28" EAST, 100.00 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF EAST HULL AVENUE TO

THE EAST RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD;
THENCE SOUTH 00°09'40" EAST, 25.00 FEET ALONG THE EAST RIGHT-OF-
WAY LINE OF THE UNION PACIFIC RAILROAD TO THE POINT OF
BEGINNING.

(B) Conditions of Vacation.

Vacation of said right-of-way is effective upon the City's recording with the Polk County, Iowa Recorder of written acknowledgement by the City Engineer of the fulfillment of all of the following conditions precedent:

- (1) Payment by Union Pacific Railroad Company to the City of Des Moines of the agreed-upon consideration for the railroad crossing closure within said right-of-way and associated improvements.
- (2) Conversion by Union Pacific Railroad Company of nine (9) manual switches to power operated switches, and completion of all necessary improvements related thereto, within said Railroad Company's Short Line Yard south of Dean Avenue.
- (3) Performance by Union Pacific Railroad Company of any and all work required of it for the Guthrie Avenue and Dixon Street and the E. University Avenue and Hubbell Avenue advance warning informational signs, including but not limited to installation of the cabinet for the advance warning informational signs.
- (4) Conveyance by Union Pacific Railroad Company to the City of Des Moines of a permanent roadway easement and temporary easement for construction thereof, or acquisition of an alternative roadway access that is acceptable to and accepted by the City, for roadway access associated with the closure of the railroad crossing at Southeast 34th Street as more fully described in Section 3 herein below. Said easements or acceptable alternative thereto shall be provided in form and with marketable title approved by the City.

Sec. 2. There is no public need for or benefit from the right-of-way proposed to be vacated, and the City would not be inconvenienced by reason of the vacation of City-owned right-of-way located at Scott Avenue between Southeast 20th Street and Southeast 22nd, more specifically described as follows, and vacation of said right-of-way is hereby approved and said right-of-way is hereby vacated, to be effective upon fulfillment of the terms and conditions set forth in this Section.

(A) Legal Description of Right-of-Way.

SCOTT AVENUE NEAR SOUTHEAST 22ND STREET

THAT PORTION OF SCOTT AVENUE RIGHT-OF-WAY THAT CROSSES THE
UNION PACIFIC RAILROAD RIGHT-OF-WAY BETWEEN SOUTHEAST 20TH

STREET AND SOUTHEAST 22ND STREET IN THE CITY OF DES MOINES, POLK COUNTY, IOWA;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL "D", THE VACATED SCOTT AVENUE RIGHT-OF-WAY AS SHOWN ON THE PLAT OF SURVEY RECORDED AS BOOK 14161, PAGES 49-50 IN THE OFFICE OF THE RECORDER OF POLK COUNTY, IOWA; THENCE SOUTH 89°(DEGREES) 47'(MINUTES) 36"(SECONDS) EAST, 103.37 FEET ALONG THE NORTH RIGHT-OF-WAY LINE OF SCOTT AVENUE TO THE EASTERLY LINE OF THE UNION PACIFIC RIGHT-OF-WAY; THENCE SOUTH 13°35'41" EAST, 81.98 FEET ALONG THE EASTERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE SOUTH RIGHT-OF-WAY LINE OF SCOTT AVENUE; THENCE NORTH 89°48'35" WEST, 103.31 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF SCOTT AVENUE TO THE SOUTHEAST CORNER OF SAID PARCEL "D" ON THE WESTERLY RIGHT OF WAY OF THE UNION PACIFIC RAILROAD; THENCE NORTH 13°37'44" WEST, 82.03 FEET ALONG THE WESTERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD AND ALSO THE EASTERLY LINE OF SAID PARCEL "D" TO THE POINT OF BEGINNING.

(B) Condition of Vacation.

Vacation of said right-of-way is effective upon the City's recording with the Polk County, Iowa Recorder of written acknowledgement by the City Engineer of the fulfillment of the following condition precedent:

- (1) Payment by Union Pacific Railroad Company to the City of Des Moines of the agreed-upon consideration for the railroad crossing closure within said right-of-way and associated improvements.

Sec. 3. There is no public need for or benefit from the right-of-way proposed to be vacated, and the City would not be inconvenienced by reason of the vacation of City-owned right-of-way located at Southeast 34th Street between Scott Avenue and East Court Avenue, more specifically described as follows, and vacation of said right-of-way is hereby approved and said right-of-way is hereby vacated, to be effective upon and subject to fulfillment of the terms and conditions set forth in this Section.

(A) Legal Description of Right-of-Way.

SOUTHEAST 34TH STREET AT LAUREL HILL DRIVE

THAT PORTION OF SOUTHEAST 34TH STREET RIGHT-OF-WAY THAT CROSSES THE UNION PACIFIC RAILROAD RIGHT-OF-WAY BETWEEN SCOTT AVENUE AND EAST COURT AVENUE IN THE CITY OF DES MOINES, POLK COUNTY, IOWA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET AND THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 0°(DEGREES) 06'(MINUTES) 26"(SECONDS) EAST, 107.02 FEET ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET TO THE NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE SOUTH 70°05'09" EAST, 53.33 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD TO THE EAST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET; THENCE SOUTH 0°12'09" WEST, 106.13 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 70°55'59" WEST, 52.87 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY OF THE UNION PACIFIC RAILROAD TO THE POINT OF BEGINNING ON THE WEST RIGHT-OF-WAY LINE OF SOUTHEAST 34TH STREET.

(B) Conditions of Vacation.

Vacation of said right-of-way is effective upon the City's recording with the Polk County, Iowa Recorder of written acknowledgement by the City Engineer of the fulfillment of all of the following conditions precedent:

- (1) Payment by Union Pacific Railroad Company to the City of Des Moines of the agreed-upon consideration for the railroad crossing closure within said right-of-way and associated improvements.
- (2) Relocation by Union Pacific Railroad Company of the railroad crossing warning devices from the Southeast 34th Street railroad crossing area to the Southeast 36th Street railroad crossing area and installation of concrete-paneled crossing surface within the Southeast 36th Street railroad crossing area.
- (3) Performance by Union Pacific Railroad Company of any and all work required of it for the Guthrie Avenue and Dixon Street and the E. University Avenue and Hubbell Avenue advance warning informational signs, including but not limited to installation of the cabinet for the advance warning informational signs.
- (4) Conveyance by Union Pacific Railroad Company to the City of Des Moines of a permanent roadway easement and temporary easement for construction thereof, or acquisition of an alternative roadway access that is acceptable to and accepted by the City, for roadway access associated with the closure of the railroad crossing within the Southeast 34th Street right-of-way as described herein. Said easements or acceptable alternative thereto shall be provided in form and with marketable title approved by the City.

(C) Reservation of Right to Rededicate Public Right-of-Way.

The City of Des Moines hereby reserves the right to rededicate said right-of-way in the event that Union Pacific Railroad Company, its successors or assigns, obtains authority to abandon its rail line within the Southeast 34th Street right-of-way. In such event, the City shall have the right to rededicate said right-of-way as public right-of-way and to make or cause to be made the improvements necessary to provide public access across the rededicated right-of-way. The City's rights include, but are not limited to, the right to remove track materials upon and within said right-of-way as determined by the City to be required for public access, regardless of and without concern for damage to said materials.

Sec. 4. That vacation of the right-of-way located at Hull Avenue between Delaware Avenue and Dixon Street; Scott Avenue between Southeast 20th Street and Southeast 22nd Street; and Southeast 34th Street between Scott Avenue and East Court Avenue, all as legally described herein, is subject to reservation by the City of Des Moines, on behalf of the City and any and all public and private utilities and their respective employees, agents, consultants, contractors and assigns, of a permanent easement for access to and repair, maintenance, operation, construction and replacement of existing and future public utilities and existing private utilities within the right-of-way. Provided, however, that any access to and repair, maintenance, operation, construction and replacement of any existing and future City utilities shall be undertaken pursuant to, and by the City acting as Contracting Authority under, the Iowa Department of Transportation (IDOT) Developmental Specifications for Maintenance Work on Railroad Right-of-Way (Union Pacific Railroad)(DS-12009), effective date October 16, 2012, in the form attached to the Agreement between the City and Union Pacific Railroad Company for closure of the grade crossings at Scott Avenue, Hull Avenue and Southeast 34th Street, or amendments thereto to the extent made with the concurrence of the Railroad. In the future event that said IDOT Developmental Specifications are determined in writing by both the City and Union Pacific Railroad Company to be inapplicable, then such access, repair, maintenance, operation, construction and replacement shall be undertaken in compliance with an acceptable alternative agreed upon in writing by both the City and Union Pacific Railroad Company.

Sec. 5. That the City Clerk is hereby authorized and directed to cause certified copies of this ordinance and proof of publication thereof together with proof of publication of the notice of the public hearing on this matter to be properly filed in the office of the Recorder of Polk County, Iowa.

Sec. 6. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Glenna K. Frank, Assistant City Attorney

Christopher J. Coleman

Mayor Pro Tem

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 13- 1509), passed by the City Council of said City at a meeting held September 23, 2013 signed by the Mayor Pro Tem on September 23, 2013 and published and provided by law in the Business Record on October 11, 2013. Authorized by Publication Order No.8627.

Diane Rauh, City Clerk