

67A

Date July 24, 2006

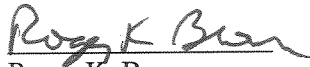
An Ordinance entitled, "AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located along NE 50th Street in the Broadway Business Park, from the "A-1" Agricultural District classification it will automatically receive upon annexation, to a Limited "M-1" Light Industrial District classification",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)



Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BROOKS				
COLEMAN				
HENSLEY				
MAHAFFEY				
KIERNAN				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, 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.

City Clerk

67A

Prepared by: Roger K. Brown, Assist City Atty, 400 Robert Ray Dr., Des Moines, IA 50309 515/283-4541
Return Address: City Clerk - City Hall, 400 Robert Ray Dr., Des Moines, IA 50309
Title of Document: City of Des Moines, Ordinance No. _____
Legal Description: See below on this page.

ORDINANCE NO. _____

AN ORDINANCE to amend the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, by rezoning and changing the district classification of certain property located along NE 50th Street in the Broadway Business Park, from the "A-1" Agricultural District classification it will automatically receive upon annexation, to a Limited "M-1" Light Industrial District classification.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Official Zoning Map of the City of Des Moines, Iowa, set forth in Section 134-277 of the Municipal Code of the City of Des Moines, Iowa, 2000, be and the same is hereby amended by rezoning and changing the district classification of certain property located along NE 50th Street in the Broadway Business Park, more fully described as follows, from the "A-1" Agricultural District classification it will automatically receive upon annexation, to a Limited "M-1" Light Industrial District classification:

Lots 1, 6 through 16, and 22, all in Broadway Business Park Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

Sec. 2. That this ordinance and the zoning granted by the terms hereof are subject to the following imposed additional conditions which have been agreed to and accepted by execution of an Acceptance of Rezoning Ordinance by all owners of said property and are binding upon the owners and their successors, heirs, and assigns as follows:

A. The following uses of structures and land shall be prohibited upon the Property::

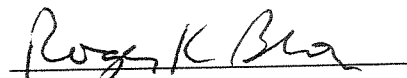
1. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
2. Farms, except growing crops on any land that has not been improved;
3. Asphalt or concrete mixing or production facilities;
4. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
5. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
6. Cemeteries;
7. Adult entertainment businesses;
8. Arcades or game rooms as a substantial portion of a business;
9. Taverns and nightclubs;
10. Animal rendering or slaughter facility;
11. Off-premises advertising signage;
12. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
13. Jail, prison, or any other correctional facility of any kind;
14. Any public or private nuisance or illegal activity;
15. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks;
16. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.
17. Temporary structures of any kind other than during construction for construction purposes, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
18. Pole buildings, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.

- B. Sidewalks shall be installed on along the public street on each lot prior to the later of: i) three (3) months after the property is annexed into the City of Des Moines; or, ii) the issuance of a Certificate of Occupancy for a building hereafter constructed on an undeveloped lot.
- C. All facades on the exterior wall of any principal or accessory building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director to be consistent with the overall development and design of Broadway Business Park.
- D. All overhead doors and loading docks on any principal or accessory building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue), unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
- E. Any determination by the Community Development Director in the application of the above conditions and requirements can be appealed to the Zoning Board of Adjustment.

Sec. 3. This ordinance shall be in full force and effect from and after the later of its passage and publication as provided by law, or the annexation of the Property into the City of Des Moines.

Sec. 4. That the City Clerk is hereby authorized and directed to cause certified copies of the vicinity map, this ordinance, proof of publication of this ordinance, and the Acceptance of Rezoning Ordinance signed by all owners of the Property, to be properly filed in the office of the Polk County Recorder.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

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Re: Lots 1, 6 through 16, and 22, all in Broadway Business Park Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa (hereinafter referred to as the "Property").

ACCEPTANCE OF REZONING ORDINANCE

The undersigned hereby state, warrant and agree as follows:

(1) Hubbell Properties I, L.C. (Series A), hereby states and warrants that it is the sole owner of the following portion of the Property described above:

Lots 9 through 15, and Lot 22, all in Broadway Business Park Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(2) Hubbell Properties II, L.C. (Series C), hereby states and warrants that it is the sole owner of the following portion of the Property described above:

Lots 1, 6, 7 and 8, all in Broadway Business Park Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(3) GTO Investments, L.L.C., hereby states and warrants that it is the sole owner of the following portion of the Property described above:

Lot 16, in Broadway Business Park Plat 2, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

(4) Each of the undersigned hereby agrees that in the event the City of Des Moines, Iowa, acts to rezone the Property from the "A-1" Agricultural District classification it will automatically receive upon annexation, to a Limited "M-1" Light Industrial District classification, we agree and accept on behalf of the owners to the imposition of the following conditions to run with the land and be binding upon all successors, heirs and assigns as part of the ordinance so rezoning the Property:

A. The following uses of structures and land shall be prohibited upon the Property:

1. Residential dwellings, duplexes, town homes, apartments, group homes, institutional residential facilities, mobile homes, or any other residential facility of any kind, except that hotels and motels who rent to transient guests are permitted;
2. Farms, except growing crops on any land that has not been improved;
3. Asphalt or concrete mixing or production facilities;
4. Refining, smelting or mining operations, including, but not limited to gravel extraction, or drilling for or extraction of subsurface substances;
5. Electrical, or gas generating facilities, except for use primarily on the premises where the same is generated;
6. Cemeteries;
7. Adult entertainment businesses;

8. Arcades or game rooms as a substantial portion of a business;
 9. Taverns and nightclubs;
 10. Animal rendering or slaughter facility;
 11. Off-premises advertising signage;
 12. Sanitary sewer treatment facility (other than for waste material generated on the premises) or solid waste disposal facility;
 13. Jail, prison, or any other correctional facility of any kind;
 14. Any public or private nuisance or illegal activity;
 15. Any use that presents an undue hazard of pollution, fire or explosion, including, but not limited to, the manufacture, storage, display or sale of explosives or fireworks;
 16. Any use that creates hazardous or otherwise unreasonable levels of smoke, noise, vibrations, dust, pollutants, refuse, water borne waste, fumes, odors or other emissions; provided, that what level is "unreasonable" shall be determined with consideration given to the fact that the Property is dedicated for use as a retail commercial and light industrial area.
 17. Temporary structures of any kind other than during construction for construction purposes, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
 18. Pole buildings, unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
- B. Sidewalks shall be installed on along the public street on each lot prior to the later of: i) three (3) months after the property is annexed into the City of Des Moines; or, ii) the issuance of a Certificate of Occupancy for a building hereafter constructed on an undeveloped lot.
- C. All facades on the exterior wall of any principal or accessory building facing a public street must be comprised of no less than 20% in windows, doors, or masonry materials such as brick, cut stone, or decorative pre-cast concrete units, unless unique in architectural design and such design is approved by the Community Development Director to be consistent with the overall development and design of Broadway Business Park.
- D. All overhead doors and loading docks on any principal or accessory building shall not face NE 50th Street or NE Broadway Avenue (NE 46th Avenue), unless determined by the Community Development Director to be adequately screened and designed in such a manner that the overall development and design of Broadway Business Park is not compromised.
- E. Any determination by the Community Development Director in the application of the above conditions and requirements can be appealed to the Zoning Board of Adjustment.

(3) That in the event any portion of the Property is hereafter rezoned to a district classification different from Limited "M-1", then this Acceptance shall be immediately terminated as applied to the real estate so rezoned on the effective date of such rezoning, and the conditions agreed to herein shall be rendered null and void, provided, if there be any such rezoning to a more restricted

zoning classification, any then legal actual use of such real estate shall become a legal non-conforming use.

The words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

Hubbell Properties I, L.C. (Series A)
an Iowa limited liability company
By: Hubbell Realty Company, Manager

By: *Dan D. Dutcher*
Dan D. Dutcher, Vice President

AND By: *R. Michael Hayes*
R. Michael Hayes, Secretary

Hubbell Properties II, L.C. (Series C)
an Iowa limited liability company
By: Hubbell Realty Company, Manager

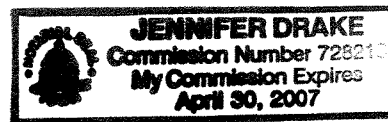
By: *Dan D. Dutcher*
Dan D. Dutcher, Vice President

AND By: *R. Michael Hayes*
R. Michael Hayes, Secretary

State of Iowa)
) ss:
County of Polk)

On this 13th day of July, 2006, before me, a notary public, personally appeared **Dan D. Dutcher** and **R. Michael Hayes**, to me personally known, who being by me duly sworn did say that they are the Vice- President and the Secretary, respectively, of Hubbell Realty Company, which is the Manager of both **Hubbell Properties I, L.C. (Series A)**, and **Hubbell Properties II, L.C. (Series C)**, both of which are Iowa limited liability companies, and that the foregoing instrument was signed on behalf of said corporation by authority of its directors, and they acknowledged the execution of the said instrument to be the voluntary act and deed of said corporation and limited liability companies, by them voluntarily executed.

Jennifer Drake
Notary Public in the State of Iowa
My commission expires: 4/30/07



ACCEPTANCE OF REZONING ORDINANCE
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GTO Investments, L.L.C.,
an Iowa limited liability company

By: _____
Greg Ortmann, Manager

State of Iowa)
) ss:
County of Polk)

On this _____ day of July, 2006, before me, a notary public, personally appeared Greg Ortmann, to me personally known, who being by me duly sworn did say that he is a **Manager** of **GTO Investments, L. L.C.**, an Iowa limited liability company, and that the foregoing instrument was signed on behalf of said company under authority given to the Manager by the company's Articles of Organization, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said company, by it voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____