

Date June 23, 2014

**SET HEARING FOR VACATION OF AIR SPACE OVER PORTIONS OF E. 5<sup>TH</sup> STREET AND E. GRAND AVENUE ADJOINING 505 EAST GRAND AVENUE, AND FOR CONVEYANCE OF AN EASEMENT TO 505 EAST GRAND, LLC FOR \$3,885**

**WHEREAS**, on June 9, 2014, by Roll Call No. 14-0850, the City Council received a recommendation from the City Plan and Zoning Commission that air space over East 5<sup>th</sup> Street and East Grand Avenue rights-of-way adjoining 505 East Grand Avenue (herein “City Air Space”), be vacated to allow for overhang elements of a mixed-use building project to extend over the public sidewalks in East Grand Avenue and East 5<sup>th</sup> Street rights-of-way at a height of 10 feet above grade, subject to certain conditions as set forth below; and

**WHEREAS**, 505 East Grand, LLC is the owner of the real property locally known as 505 East Grand Avenue, which property abuts the City Air Space, and has offered to the City of Des Moines the purchase price of \$3,885 for the vacation of the City Air Space and purchase of an air space easement interest in the City Air Space for the purposes described above, which purchase price reflects the fair market value of the easement as currently estimated by the City’s Real Estate Division; and

**WHEREAS**, the vacation and conveyance is proposed to be approved subject to the requirements of the City Plan and Zoning Commission recommendation, as follows:

1. Any overhang elements shall generally be in accordance with the submitted building elevations and site sketch.
2. Compliance with comments by the Urban Design Review Board for any portions of the proposed project that will affect the adjoining rights-of-way.
3. Compliance with street tree planting specifications approved by the Permit and Development Center through a revised landscaping plan, and Tatarian Maple trees placed in planter beds at the approved locations; and

**WHEREAS**, there is no known current or future public need or benefit for the City Air Space proposed to be vacated, and the City will not be inconvenienced by the vacation and conveyance of easement interest in said property as described herein.

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

1. That the City Council of the City of Des Moines shall consider adoption of an ordinance permanently vacating air space over East 5<sup>th</sup> Street and East Grand Avenue rights-of-way adjoining 505 East Grand Avenue, legally described as follows:

LEGAL DESCRIPTION: TRACT 'A' - AWNING - AIR RIGHTS EASEMENT

All of the air space for that part of East 5th Street Right-of-Way adjoining LOT 5 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa and described as follows:

.....  
**Date** June 23, 2014 .....

Beginning at the Northwest Corner of LOT 5 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa; thence South 15°06'00" East, 65.00 feet along the West Line of said LOT 5, also being the East Right-of-Way Line of East 5th Street; thence South 74°54'00" West, 7.00 feet; thence North 15°06'00" West, 64.99 feet; thence North 74°49'22" East, 7.00 feet to the Point of Beginning, containing 455 Square Feet; located below a plane with an elevation of 55.00 feet (City of Des Moines Datum) and above a plane with an elevation of 35.00 feet (City of Des Moines Datum), all included in and forming a part of the City of Des Moines, Polk County, Iowa.

LEGAL DESCRIPTION: TRACT 'B' - AWNING - AIR RIGHTS EASEMENT

All of the air space for that part of East Grand Avenue Right-of-Way adjoining LOT 4 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa and described as follows:

Commencing at the Northeast Corner of the West 20 feet of LOT 3 of BLOCK 18 of EAST FORT DES MOINES, an Official Plat, now included and forming a part of the City of Des Moines, Iowa; thence South 74°49'22" West, 20.00 feet along the North Line of said LOT 3, also being the South Right-of-Way Line of East Grand Avenue to the Point of Beginning, also being the Northeast Corner of LOT 4 of said BLOCK 18; thence continuing South 74°49'22" West, 20.00 feet along the North Line of said LOT 4, also being the South Right-of-Way Line of East Grand Avenue; thence North 15°10'38" West, 5.00 feet; thence North 74°49'22" East, 20.00 feet; thence South 15°10'38" East, 5.00 feet to the Point of Beginning, containing 100 Square Feet; located below a plane with an elevation of 58.00 feet (City of Des Moines Datum) and above a plane with an elevation of 38.00 feet (City of Des Moines Datum), all included in and forming a part of the City of Des Moines, Polk County, Iowa.

2. That if the City Council decides to vacate the above-described air space, the City of Des Moines proposes to convey an easement in such vacated air space to 505 East Grand, LLC for \$3,885, subject to all conditions set forth in the Plan and Zoning Commission recommendation and herein above.
3. That the meeting of the City Council at which the adoption of said ordinance and the sale and conveyance of such easement is to be considered shall be on July 14, 2014, 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.
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 Section 362.3 of the Iowa Code.
5. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

★ **Roll Call Number**

Agenda Item Number


**23**

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Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

  
 Glenna K. Frank  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	

**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.

\_\_\_\_\_ Mayor

\_\_\_\_\_ City Clerk

REGISTER ORDER NO. \_\_\_\_\_ ROLL CALL LEGAL BULLETIN BOARD FOLLOW UP

NOTICE OF PROPOSAL TO VACATE AND CONVEY EASEMENT IN RIGHT-OF-WAY

NOTICE IS HEREBY GIVEN that the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance permanently vacating air space over East 5<sup>th</sup> Street and East Grand Avenue rights-of-way adjoining 505 East Grand Avenue, Des Moines, Iowa, legally described as follows:

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NOTICE IS FURTHER GIVEN that the City Council of the City of Des Moines, Iowa, has adopted a resolution setting a hearing relating to a proposal to grant an air space easement in the above-described air space to 505 East Grand, LLC for \$3,885, subject to all conditions set forth in the City Plan and Zoning Commission recommendation and in the City Council resolution setting hearing on the proposal, if the City Council first decides to vacate such air space.

NOTICE IS FURTHER GIVEN that the City Council will consider the adoption of the proposed vacation ordinance and approval of the proposed easement conveyance after a public hearing to be held at 5:00 p.m., in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, on July 14, 2014. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

PUBLISHED IN THE DES MOINES REGISTER ON \_\_\_\_\_.