



Roll Call Number

14-0782

Agenda Item Number

35

Date May 19, 2014

RESOLUTION CLOSING HEARING ON THE VACATION AND LEASE OF PUBLIC RIGHT-OF-WAY FOR A SIDEWALK CAFE IN THE ALLEY WEST OF AND ADJOINING 210 COURT AVENUE

WHEREAS, the City has received an application from Riley Drive Entertainment XIII, Inc., d/b/a Tonic on Court, represented by its President, Scott Anderson, to vacate and lease a portion of the north/south alley lying west of and adjoining its business at 210 Court Avenue, for the operation of a sidewalk cafe; and,

WHEREAS, the public right-of-way proposed to be used for the sidewalk cafes has not been previously vacated and must first be vacated before the City may approve the proposed Sidewalk Cafe Lease; and,

WHEREAS, vacation of the alley without the imposition of restrictive covenants on the future development of the alley as provided below would cause the adjoining building at 210 Court Avenue to be in violation of the Building and Fire Code setback requirements; and,

WHEREAS, on May 5, 2014, by Roll Call No. 14-0687, it was duly resolved by the City Council that the proposed vacation and lease of such right-of-way be set down for hearing on May 19, 2014, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of said proposal to vacate and lease public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and lease, 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, the objections to said proposed vacation and lease of public right-of-way as described below are hereby overruled and the hearing is closed.

2. There is no public need for the right-of-way proposed to be vacated and subject to the imposition of the restrictions on the future use of the vacated alley as provided below, the public would not be inconvenienced by reason of the vacation of the portion of the north/south alley right-of-way lying west of and adjoining 210 Court Avenue, more specifically described as follows:

The North 55.0 feet of the North/South alley right-of-way being 16.5 feet in width and lying West of and adjoining Lot 11, Block 30, Original Town of Fort Des

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Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

3. To preserve the existing rights of the owners of buildings adjoining the vacated alley to have window openings adjoining the vacated alley, the Mayor and City Clerk are hereby authorized and directed to execute the Declaration of Covenants imposing restrictions on the future development of the vacated alley, in the form prepared by the City Legal Department and available for inspection in the office of the City Clerk. The City Clerk shall cause the executed Declaration of Covenants to be recorded in the office of the Polk County Recorder with and immediately following the vacation ordinance.

4. Subject to final passage and publication of the ordinance vacating such right-of-way, the lease of the following described portion such vacated right-of-way:

The South 51.00 feet of the North 54.17 feet of the North/South alley right-of-way being 16.5 feet in width and lying West of and adjoining Lot 11, Block 30, Original Town of Fort Des Moines, an Official Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.

to Riley Drive Entertainment XIII, Inc., d/b/a Tonic on Court, for the operation of a sidewalk cafe is hereby approved, and the Permit and Development Center Administrator is hereby authorized and directed to sign a Lease Agreement for Sidewalk Cafe with such business in the approved standard form.

MOVED by Hensley to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown, Assistant City Attorney
G:\SHARED\LEGAL\BROWN\Sidewalk Cafes\Tonic on Court\RC Hrg.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin Council 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.

Diane Rauh

City Clerk