



Roll Call Number

22-0939

Agenda Item Number

66

Date June 13, 2022

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HOLD HEARING FOR VACATION OF ALLEY RIGHT-OF-WAY LOCATED NORTH OF AND ADJOINING 206 6TH AVENUE AND APPROVAL OF A LICENSE AGREEMENT WITH ND 22 FLEMING LLC AND 206 6TH AVENUE, LLC

WHEREAS, on January 10, 2022, by Roll Call No. 22-0039, the City Council of the City of Des Moines, received and filed a recommendation from the City Plan and Zoning Commission to approve a City-initiated request to vacate a portion of the east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, hereinafter "Property", subject to the following conditions:

1. Any fencing and/or gate(s) shall be architecturally compatible with the adjoining development, to the satisfaction of the City's Planning and Urban Design Administrator; and
2. Reservation of any necessary easements for any existing utilities until such time that they are abandoned or relocated; and

WHEREAS, the Property has been the focus of numerous citizen complaints regarding illicit and illegal activities; and

WHEREAS, the City's Real Estate Division has negotiated a License Agreement ("Agreement") with ND 22 Fleming, LLC, owner of 218 6th Street, and 206 6th Avenue, LLC, owner of 206 6th Avenue, (hereinafter "Licensees") for the installation and maintenance of a gate/fence across the east entrance to the Property which will allow the Licensees to control access to the Property, which Agreement will include, among other terms, the following:

1. A twenty (20) year license term (Initial Term) with the unilateral right to renew the Agreement for one additional twenty (20) year term (Renewal Term);
2. A one-time lump sum payment of Two Hundred Dollars (\$200.00) for the Initial Term of the agreement; and a one-time lump sum payment of Four Hundred Dollars (\$400.00) for the Renewal Term of the Agreement, which amounts reflect the limited fair market value of the leased area as currently estimated by the City's Real Estate Division;
3. The License is given subject to all existing easements and encroachments therein, including but not limited to an ingress/egress easement and a building setback easement;
4. A six (6) foot clear and unobstructed pedestrian pathway must be maintained within said sidewalk right-of-way at all times;
5. Termination by either party for any reason upon sixty (60) days written notice to the other party; and

WHEREAS, there is no known current or future public need for the portion of alley right-of-way proposed to be vacated and licensed, and the City will not be inconvenienced by the vacation and license of said property; and

WHEREAS, on May 23, 2022, by Roll Call No. 22-0777, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and license of a portion of the east-west segment of alley right-of-way be set for hearing on June 13, 2022, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and



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WHEREAS, due notice of said proposal to vacate and license a portion of the east-west segment of alley right-of-way was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in the proposed vacation and license, 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, any and all objections to the proposed vacation and license of a portion of the east-west alley segment located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the portion of east-west alley right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of a portion of the east-west segment of alley right-of-way located west of 6th Avenue, between Walnut Street and Mulberry Street, and adjoining 218 6th Street to the north, 606 Walnut Street to the west and 206 6th Avenue to the south, legally described as follows, and said vacation is hereby approved:

-EXCEPT the West 66 feet-, All of the East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa;

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 37.72 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29"



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West, 4.00 feet along the North line of said Lot 6; thence North 15°46'31" West, 4.00 feet; thence North 74°13'29" East, 4.00 feet; thence South 15°46'31" East, 4.00 feet to the Point of Beginning-,

AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

and containing approximately 1,007 Square Feet.

- 3. The proposed license of such vacated alley right-of-way, as legally described below, to ND 22 Fleming, LLC and 206 6th Avenue, LLC for twenty years for \$200.00, subject to any and all easements, restrictions and covenants of record, is hereby approved:

-EXCEPT the West 66 feet-, All of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk county, Iowa,

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 16.03 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 18.67 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 18.67 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

AND

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AND

-EXCEPT Part of the Vacated East/West Alley lying North of and adjoining Lot 6 in Block 11 of FORT DES MOINES, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as follows: Commencing at the Northeast corner of said Lot 6 in Block 11 of FORT DES MOINES; thence South 74°13'29" West, 53.35 feet along the North line of said Lot 6 to the Point of Beginning; thence continuing South 74°13'29" West, 8.43 feet along the North line of said Lot 6; thence North 15°46'31" West, 3.00 feet; thence North 74°13'29" East, 8.43 feet; thence South 15°46'31" East, 3.00 feet to the Point of Beginning-,

and containing approximately 1,007 Square Feet.

4. The Mayor is authorized and directed to sign the License Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the License Agreement and a copy of the other documents to the Licensee.
8. Non-project related land sale and lease proceeds are used to support general operating budget expenses: Org – EG064090.

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Moved by Voss to adopt. Second by Mandelbaum

APPROVED AS TO FORM:

/s/Mackenzie L. Moreno
 Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
MANDELBAUM	✓			
SHEUMAKER				✓
VOSS	✓			
WESTERGAARD	✓			
TOTAL	6			1
MOTION CARRIED		APPROVED		
<u>J. M. Frankin Cowne</u> Mayor				

CERTIFICATE

I, LAURA BAUMGARTNER, Acting 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, Acting City Clerk