

ORDINANCE NO. 1429

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, declaring certain City property located within the Port of Seattle "Buy-Out" area commonly known as portions of South 208<sup>th</sup> Street, South 210<sup>th</sup> Street, and 20<sup>th</sup> Avenue South as surplus to the needs of the City and authorizing the sale of these properties to the Port of Seattle, subject to the applicant's compliance with requirements set forth herein.

WHEREAS, the Port of Seattle has filed a petition to vacate all City-controlled streets and rights-of-way within a specific territory which have been acquired by the Port of Seattle for purposes related to Sea-Tac International Airport and aircraft noise mitigation, and

WHEREAS, City staff researched the origin of City streets requested to be vacated and determined that some streets are not dedicated as public rights-of-way, but rather are deeded property for public street purposes, and

WHEREAS, the Port of Seattle has been notified of the disposition of ownership of these streets and it desires to purchase these deeded properties as well as vacate the remaining City-controlled streets determined to be public rights-of-way, and

WHEREAS, a Development Agreement between the Port of Seattle and City of Des Moines (the First Development Agreement) executed on July 11, 2005 contemplates the acquisition of public streets to provide for future redevelopment of property in the Port of Seattle "Buy-Out" area, and

WHEREAS, no apparent municipal use of the said public streets continues to exist, but the Port has reason to convert the rights-of-way for Business Park commercial development purposes, and

WHEREAS, the Midway Sewer District and the Highline Water District have existing facilities in portions of the city owned streets requested to be surplused which will continue to provide service to other properties and require easements to be granted to allow for their continued use, and

WHEREAS, RCW 39.33.010 specifies, "The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned," and

WHEREAS, The City of Des Moines and the Port of Seattle are political subdivisions of the State and as such are eligible to transfer and sell properties to each other pursuant to RCW 39.33.010, and

**WHEREAS**, RCW 39.33.020 states that The City of Des Moines must hold a public hearing to provide public notice prior to disposing of surplus property having an estimated value greater than fifty thousand dollars, and

**WHEREAS**, The City Council conducted a public hearing on February 14, 2008 and provided for public testimony regarding the declaration to surplus public property and the sale of said property to the Port of Seattle, and

**WHEREAS**, notice of the public hearing was given in accordance with RCW 39.33.020 including a news release to printed and electronic media, providing a description of the future intended use of said property declared surplus, and providing notice within at least ten (10) days but no greater than 25 days prior to the hearing, and

**WHEREAS**, the City Council of the City of Des Moines passed this Ordinance to a second reading on February 28, 2008, and

**WHEREAS**, the City Council continued the second reading of this Ordinance to March 6, 2008, and

**WHEREAS**, no objections to surplus the public properties in question or sell these properties to the Port of Seattle were filed by any abutting property owners prior to the hearing, and the Council finds that no person has demonstrated special injury due to substantial impairment of access to such person's property, and

**WHEREAS**, the Council finds that there is no public need sufficient to maintain City ownership of the streets legally described herein and as depicted on the map marked Exhibit "A" to this Ordinance and it is in the public interest to surplus these properties and sell them to the Port of Seattle to allow for redevelopment for Business Park purposes subject to the conditions of approval contained herein, and

**WHEREAS**, on March 6, 2008, the City Council did vote to approve Ordinance No. 1428 allowing for the vacation by petition method City rights-of-way known as South 212<sup>th</sup> Street, South 213<sup>th</sup> Street, South 214<sup>th</sup> Street, 20<sup>th</sup> Avenue South, 20<sup>th</sup> Place South, 21<sup>st</sup> Avenue South, and 22<sup>nd</sup> Avenue South located in and abutting a portion of property commonly known as the Port of Seattle "Buy-Out" area within the City of Des Moines, subject to the applicant's compliance with requirements set forth within Ordinance No. 1428, and

**WHEREAS**, in Ordinance No. 1428 the Council acted to approve Section 3.3 which provided that the ordinance would be effective in sixty (60) days and further required that the Port of Seattle and City execute the Draft First Addendum to the First Development Agreement within 60 days of Council action on this ordinance, and

**WHEREAS**, the parties to the First Addendum to the First Development Agreement (hereinafter "Addendum") with the Port of Seattle for the Des Moines Creek Business Park (DMCBP) request that the Council extend the time frame for compliance with Ordinance No. 1428 an additional 90 days and amend the ordinance accordingly, and

**WHEREAS**, the City seeks to amend Ordinance No. 1428 prior to its effective date to allow the ordinance to reflect the intent of the Council to add an additional ninety (90) days to the time frame established in Section 3.3, and

**WHEREAS**, the amendment of Section 3 and the reenactment of this Ordinance is in compliance with *Bale v. Auburn* 87 Wash. App. 205 (1997) and *Thorp v. Devin*, and 26 Wn2d 333 (1946), and the City having expressed its intent through this amendment and reenactment; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1. Findings adopted.** Based on the evidence presented, the City Council adopts the following findings of fact:

(1) The public properties which are the subject of this ordinance consist of strips of property used for street purposes (South 208<sup>th</sup> Street, South 210<sup>th</sup> Street, and 20<sup>th</sup> Avenue South) that are located within the "Buy-Out" area which is geographically bounded on the north by the Des Moines City limits, on the east by 24<sup>th</sup> Avenue South, on the south by South 216<sup>th</sup> Street, and on the west by the SR-509 right-of-way and property largely consisting of Des Moines Creek and its associated slopes and open spaces; and

(2) The public properties which are the subject of this ordinance are improved for transportation purposes, have previously been opened for transportation purposes, and are not subject to vacation by operation of law under the Laws of 1889-90; and

(3) City ownership of the public properties which are the subject of this ordinance is not necessary for present and future use by public utilities because present and future needs for use by public utilities can and will be met by appropriate easements retained by the City or granted by the Port of Seattle which owns property abutting the properties proposed for surplus; and

(4) The public properties which are the subject of this ordinance are surplus to the present and future needs of the citizens of the City of Des Moines for transportation purposes, and it is in the public interest to sell these properties and allow them to be aggregated with surrounding properties owned by the Port of Seattle to provide for future redevelopment for Business Park use which in turn will provide for a diversification of and an increase to City tax base.

**Sec. 2. Surplus and Sale of Public Property.**

Subject to the requirements set forth in this ordinance, the following legally described public properties as depicted on the attached map entitled Exhibit "A" are declared surplus:

THAT PORTION OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, INCLUDED WITHIN A STRIP OF LAND DESCRIBED AS FOLLOWS:

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR THE NORTH HALF OF SOUTH 208<sup>TH</sup> STREET, LYING WEST OF THE NORTHERLY EXTENSION OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 70 FEET OF LOT 9, PLAT OF MAYVALE NO. 2, AS RECORDED IN VOLUME 77 OF PLATS, PAGE 19, RECORDS OF SAID COUNTY; TOGETHER WITH

THAT PORTION OF THE NORTHWEST QUARTER, SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, INCLUDED WITHIN STRIPS OF LAND DESCRIBED AS FOLLOWS:

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR THE SOUTH HALF OF SOUTH 208<sup>TH</sup> STREET, LYING WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH AND EASTERLY OF THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR THE FULL WIDTH OF SOUTH 210<sup>TH</sup> STREET, LYING WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH AND EAST OF THE NORTH-SOUTH CENTERLINE OF SAID NORTHWEST QUARTER; TOGETHER WITH

ALL THAT RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH CONVEYED TO KING COUNTY BY DEED RECORDED UNDER AUDITOR'S FILE NO. 5441946, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE NORTHERLY ALONG THE EAST LINE OF SAID SUBDIVISION 520 FEET TO A RADIAL INTERSECTION WITH AN ARC OF A CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 45 FEET; THENCE WESTERLY, SOUTHERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE TO THE WEST LINE OF THE EAST 25 FEET OF SAID SUBDIVISION; THENCE SOUTHERLY ALONG SAID WEST LINE TO THE SOUTH LINE OF SAID SUBDIVISION; THENCE EASTERLY ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.

**Sec. 3. Conditions of Surplus and Sale of Public Property.** The public properties subject to surplus and sale under this ordinance shall be subject to the following conditions:

(1) The Port of Seattle shall compensate the City of Des Moines for the strips of real public properties legally described in this ordinance consistent with the terms of the Draft First Addendum to the First Development Agreement included as Attachment 4 to the February 28, 2008 administration report incorporated herein by this reference as Exhibit "B", unless the terms of this agreement are specifically directed to be modified by the City Manager and/or at the direction of the City Council prior to the Port of Seattle and City of Des Moines executing this agreement.

(2) The purchase of surplus public property under this ordinance shall include ownership of all inactive and non-functioning improvements to City streets, including but not limited to, pavement and drainage systems. It is the sole responsibility of the purchaser to remove and properly dispose of these inactive and non-functioning improvements.

(3) Should the Port of Seattle and the City of Des Moines fail to agree to terms and execute the Draft First Addendum to the First Development Agreement for the payment of land consisting of surplus public property legally described in this ordinance within one hundred fifty (150) days of Council action on this ordinance, City Council action on this ordinance shall be deemed void and have no legal effect and the underlying action to surplus and sell public property to the Port of Seattle shall be deemed denied.

(4) The City Manager is directed to prepare and execute applicable deeds for property conveyance to the Port of Seattle only upon receipt of final payment by the Port of Seattle and fulfillment of all conditions set forth in this ordinance.

(5) The Port of Seattle shall preserve public access to the public trail located on abutting land owned by the City. The Port shall provide access improvements within the natural open space areas adjacent to the upper critical area buffer associated with Des Moines Creek.

(6) The Port of Seattle shall contact all utility purveyors serving this site to identify and grant desired easements, if any, for active and permanent utility systems and improvements within property vacated under this ordinance.

(7) An easement is granted by the City of Des Moines to the Highline Water District and its successors and assigns for the operation, construction, repair, and maintenance of existing underground public water system improvements as constructed across and through the following described property:

THAT PORTION OF THE SOUTHWEST QUARTER, SECTION 4, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, INCLUDED WITHIN A STRIP OF LAND DESCRIBED AS FOLLOWS:

THE NORTHERLY 20 FEET OF THE NORTH HALF OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 208<sup>TH</sup> STREET LYING WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH AND EASTERLY OF THE SOUTHERLY EXTENSION OF THE WEST LINE OF THE EAST 70 FEET OF LOT 9, PLAT OF MAYVALE NO. 2, AS RECORDED IN VOLUME 77 OF PLATS, PAGE 19, RECORDS OF SAID COUNTY.

(8) An easement is granted by the City of Des Moines to the Midway Sewer District and its successors and assigns for the operation, construction, repair, and maintenance of existing underground public water system improvements as constructed across and through the following described property:

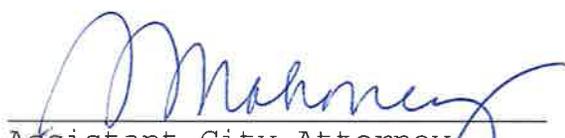


Addendum to the First Development Agreement described in Section 3 above.

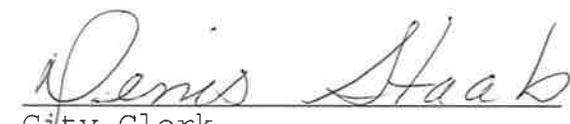
**PASSED BY** the City Council of the City of Des Moines this 8th day of May, 2008 and signed in authentication thereof this 8th day of May, 2008.

  
MAYOR

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
City Clerk

Published: May 16, 2008

Effective Date: June 7, 2008

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1429, Adopted May 8, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance declares certain City property located within the Port of Seattle "Buy-Out" area commonly known as portions of South 208<sup>th</sup> Street, South 210<sup>th</sup> Street, and 20<sup>th</sup> Avenue South as surplus to the needs of the City and authorizes the sale of these properties to the Port of Seattle, subject to the applicant's compliance with requirements set forth herein.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab  
City Clerk

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