

ORDINANCE NO. 1428

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON, vacating by the 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 herein.

**WHEREAS**, the Port of Seattle has filed a petition to vacate certain City rights-of-way within territory which has been acquired by the Port of Seattle for purposes related to Sea-Tac International Airport and aircraft noise mitigation, 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 vacation of public rights of way to provide for future redevelopment of property in the Port of Seattle "Buy-Out" area, and

**WHEREAS**, no apparent municipal use of the said rights-of-way continues to exist, but the Port has reason to convert the rights-of-way to commercial purposes, and

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

**WHEREAS**, DMMC 12.12.040 adopts the street vacation procedures of chapter 35.79 RCW, and

**WHEREAS**, RCW 35.79.010 authorizes the City Council to initiate such street vacation procedures by resolution and further requires setting of a public hearing and date for Council action which was, in this case, established by Resolution No. 1062 fixing the public hearing for February 14, 2008, to be followed by Council action, and

**WHEREAS**, notice of the public hearing was given in accordance with law and the public hearing was held before the City Council of the City of Des Moines on February 14, 2008, and all persons wishing to be heard were heard, 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 vacation 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 vacation of the rights-of-way legally described herein and as depicted on the map marked Exhibit "A" to this Ordinance, is in the public interest, 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 sixty 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 modify the time frame for compliance with Ordinance No. 1428, 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, 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*, 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 rights-of-way which are the subject of this ordinance consist of segments of public rights-of-way (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, 22<sup>nd</sup> Avenue South) 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 rights-of-way 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) The public rights-of-way which are the subject of this ordinance are not necessary for present and future use by public utilities or for native growth protection because present and future needs for use by public utilities will be met by appropriate easements retained by the City or granted by the property owner abutting the rights-of way proposed to be vacated and critical areas to be mapped and protected with the use of protective environmentally critical areas tracts or easements prior to future site development; and

(4) The public rights-of-way 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 vacate these rights-of-way, and to aggregate these properties along with surrounding properties to provide for future redevelopment and increased tax base.

**Sec. 2. Right-of-way vacation.** Subject to the requirements set forth in this ordinance, the following legally described public rights-of-way as depicted on the attached map entitled Exhibit "A" are vacated and the property within the rights-of-way so vacated shall belong to the respective abutting property owners, one-half to each as required by RCW 35.79.040, subject to the conditions set forth in section 3 of this ordinance:

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 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 212<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 (CENTERLINE OF 20<sup>TH</sup> AVENUE SOUTH); TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR SOUTH 213<sup>TH</sup> STREET LYING EAST OF THE EASTERLY RIGHT OF WAY MARGIN OF 22<sup>ND</sup> AVENUE SOUTH, AND WEST OF THE WEST LINE OF THE EAST 180 FEET OF SAID SUBDIVISION; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET LYING EAST OF THE EASTERLY RIGHT OF WAY MARGIN OF 20<sup>TH</sup> AVENUE SOUTH, AND WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 7, PLAT OF LINDA LOU AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY; TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET LYING EAST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 7, PLAT OF LINDA LOU AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY, AND WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF KING COUNTY SHORT PLAT NO. 978038, AS RECORDED UNDER RECORDING NO. 8008270717, AND NORTHERLY OF THE EAST-WEST CENTERLINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION (CENTERLINE OF SOUTH 214<sup>TH</sup> STREET AND ITS WESTERLY EXTENSION); TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF KING COUNTY SHORT PLAT NO. 978038, AS RECORDED UNDER RECORDING NO. 8008270717, AND SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET; TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING SOUTH OF THE EAST-WEST CENTERLINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION (CENTERLINE OF SOUTH 214<sup>TH</sup> STREET AND ITS WESTERLY EXTENSION), AND NORTH OF THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH 216<sup>TH</sup> STREET; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR 21<sup>ST</sup> AVENUE SOUTH LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET, AND NORTH OF THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH 216<sup>TH</sup> STREET, EXCEPT ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET; TOGETHER WITH

ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR 22<sup>ND</sup> AVENUE SOUTH LYING SOUTH OF THE WESTERLY EXTENSION OF THE NORTH LINE OF THE PLAT OF LINDA LOU, AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY, AND NORTH OF THE NORTHERLY RIGHT OF WAY OF SOUTH 214<sup>TH</sup> STREET; TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR 22<sup>ND</sup> AVENUE SOUTH LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET, AND NORTHERLY OF THE WESTERLY EXTENSION OF THE NORTH LINE OF THE PLAT OF LINDA LOU, AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY; TOGETHER WITH

ALL THAT 30 FOOT WIDE RIGHT OF WAY FOR 22<sup>ND</sup> AVENUE SOUTH LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 214<sup>TH</sup> STREET, AND NORTH OF THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH 216<sup>TH</sup> STREET; TOGETHER WITH

ALL THAT 5 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH AS DEDICATED BY THE PLAT OF MAYVALE NO. 3, AS RECORDED IN VOLUME 78 OF PLATS, PAGE 55, RECORDS OF SAID COUNTY, AND DESCRIBED AS THE WEST 5 FEET OF THE EAST 30 FEET OF THE SOUTH 329.46 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; TOGETHER WITH

ALL THAT RIGHT OF WAY FOR 20<sup>TH</sup> PLACE SOUTH AS DEDICATED BY THE PLAT OF MAYVALE, AS RECORDED IN VOLUME 76 OF PLATS, PAGE 75, RECORDS OF SAID COUNTY, LYING SOUTHERLY OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 208<sup>TH</sup> STREET.

**Sec. 3. Conditions of right-of-way vacation.** The rights-of-way subject to vacation under this ordinance shall be subject to the following conditions:

(1) The abutting property owner (Port of Seattle) shall be required to compensate the City of Des Moines for vacation of these Class A rights-of-way, pursuant to DMMC 12.12.050(2)(a) and 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 vacated rights-of-way 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 vacated streets 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 rights of way vacation shall be deemed denied.

(4) The City Manager is directed to finalize this street vacation ordinance and its recording 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 NORTHWEST QUARTER, SECTION 9, TOWNSHIP 22 NORTH, RANGE 4 EAST, W.M., KING COUNTY, WASHINGTON, INCLUDED WITHIN STRIPS OF LAND DESCRIBED AS FOLLOWS:

THE EASTERLY 20 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR 21<sup>ST</sup> AVENUE SOUTH LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET, AND NORTH OF THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH 216<sup>TH</sup> STREET, EXCEPT ALL THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET; TOGETHER WITH

THE SOUTHERLY 20 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 212<sup>TH</sup> STREET, LYING EAST OF THE EAST MARGIN OF 21<sup>ST</sup> AVENUE SOUTH AND WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 22<sup>TH</sup> AVENUE SOUTH; TOGETHER WITH

THE EASTERLY 20 FEET OF THAT PORTION OF SOUTH 212<sup>TH</sup> STREET, LYING WITHIN THE PROJECTION OF THE WEST MARGIN AND CENTERLINE OF 22<sup>ND</sup> AVENUE SOUTH THROUGH SOUTH 212<sup>TH</sup> STREET; TOGETHER WITH

THE NORTHERLY 20 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 212<sup>TH</sup> STREET, LYING EAST OF THE WEST MARGIN OF 22<sup>ND</sup> AVENUE SOUTH AND WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH.

(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 sewage system improvements as constructed across and through the following described property:

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:

THE WEST 20 FEET OF THAT 30 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING SOUTH OF THE EAST-WEST CENTERLINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION (CENTERLINE OF SOUTH 214<sup>TH</sup> STREET AND ITS WESTERLY EXTENSION), AND NORTH OF THE NORTHERLY RIGHT OF WAY MARGIN OF SOUTH 216<sup>TH</sup> STREET; TOGETHER WITH

THE EAST 20 FEET OF THE WEST 40 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF KING COUNTY SHORT PLAT NO. 978038, AS RECORDED UNDER RECORDING NO. 8008270717, AND NORTHERLY OF THE EAST-WEST CENTERLINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION (CENTERLINE OF SOUTH 214<sup>TH</sup> STREET AND ITS WESTERLY EXTENSION); TOGETHER WITH

THE WEST 20 FEET OF THAT 30 FOOT WIDE RIGHT OF WAY FOR 20<sup>TH</sup> AVENUE SOUTH LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF KING COUNTY SHORT PLAT NO. 978038, AS RECORDED UNDER RECORDING NO. 8008270717, AND SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET; TOGETHER WITH

THE EAST 20 FEET OF THE WEST 40 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR 22<sup>ND</sup> AVENUE SOUTH LYING SOUTH OF THE WESTERLY EXTENSION OF THE NORTH LINE OF THE PLAT OF LINDA LOU, AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY, AND NORTH OF THE NORTHERLY RIGHT OF WAY OF SOUTH 214<sup>TH</sup> STREET; TOGETHER WITH

THE EAST 20 FEET OF THAT 30 FOOT WIDE RIGHT OF WAY FOR 22<sup>ND</sup> AVENUE SOUTH LYING SOUTH OF THE SOUTHERLY RIGHT OF WAY MARGIN OF SOUTH 212<sup>TH</sup> STREET, AND NORTHERLY OF THE WESTERLY EXTENSION OF THE NORTH LINE OF THE PLAT OF LINDA LOU, AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY; TOGETHER WITH

THE NORTH 20 FEET OF THAT 30 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET LYING EAST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 7, PLAT OF LINDA LOU AS RECORDED IN VOLUME 57 OF PLATS, PAGE 54, RECORDS OF SAID COUNTY, AND WEST OF THE WESTERLY RIGHT OF WAY MARGIN OF 24<sup>TH</sup> AVENUE SOUTH; TOGETHER WITH

THE NORTHERLY 20 FEET OF THE SOUTHERLY 40 FEET OF THAT 60 FOOT WIDE RIGHT OF WAY FOR SOUTH 214<sup>TH</sup> STREET LYING EAST OF THE WESTERLY RIGHT OF WAY MARGIN OF 22<sup>ND</sup> AVENUE SOUTH, AND

WEST OF THE SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 7,  
PLAT OF LINDA LOU AS RECORDED IN VOLUME 57 OF PLATS, PAGE  
54, RECORDS OF SAID COUNTY; TOGETHER WITH

THE NORTH 20 FEET OF THE SOUTH 30 FEET OF THAT 60 FOOT WIDE  
RIGHT OF WAY FOR SOUTH 212<sup>TH</sup> STREET, LYING WEST OF THE RIGHT  
OF WAY CENTERLINE OF 22<sup>ND</sup> AVENUE SOUTH, AND EAST OF THE  
NORTH-SOUTH CENTERLINE OF SAID NORTHWEST QUARTER  
(CENTERLINE OF 20<sup>TH</sup> AVENUE SOUTH).

**Sec. 4. Severability-Construction.** If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

**Sec. 5. Recordation.** Upon satisfactory compliance with section 3(4) of this ordinance, the City Clerk shall cause a certified copy of this ordinance to be recorded in the records of the King County Recorder.

**Sec. 6. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage, approval, and publication in accordance with law subject to compliance with all terms of the Draft First 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.

  
M A Y O R

APPROVED AS TO FORM:

  
Asst. City Attorney

ATTEST:

  
Assistant City Clerk

Published: May 16, 2008

Effective Date: June 7, 2008

LEGAL NOTICE  
SUMMARY OF ADOPTED ORDINANCE  
CITY OF DES MOINES

ORDINANCE NO. 1428, Adopted May 8, 2008.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance vacates by the 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 herein.

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

Denis Staab  
City Clerk

Published: May 16, 2008