

Adopted as follows:

Yeas — Council Members Benson, Castaneda-Lopez, Jenkins, Leland, Sheffield, Spivey, Tate, and President Jones — 8.

Nays — None.

**Department of Public Works
City Engineering Division**

March 26, 2014

Honorable City Council:

Re: Petition No. 2488 — Sam Kelani on behalf of Ray's Check Cashing, to amend grant agreement permitting alley vacation and erection of fencing, etc. in area of 13746 Gratiot off Seymour.

Petition No. 2488 — Sam Kelani on behalf of Ray's Check Cashing requests the conversion of the north-south alley, 18 feet wide and the east-west alley 18 feet wide and variable width in the block bounded by Gratiot Avenue, 120 feet wide, Grover Avenue, 50 feet wide, Seymour, 60 and 80 feet wide, into an easement for utilities. Also requesting for encroachment into the northerly 3 feet Seymour, 80 feet wide, from Gratiot Avenue, 120 feet wide to the above said public alley, 18 feet wide, first easterly of Gratiot.

The request was approved by the Solid Waste Division — DPW, and Traffic Engineering Division — DPW. The petition was referred to the City Engineering Division — DPW for investigation (utility review) and report. This is our report.

All City Departments and privately owned utility companies have reported no objections to the conversion of the public rights-of-way into a private easement for public utilities. Provisions protecting utility installations are part of the attached resolution.

Detroit Water and Sewerage Department (DWSD) have no objection to the conversion to easement. The specific DWSD provisions for easements are included in the resolution.

Public Lighting Department (PLD) has no objection to the conversion to easement. PLD reports they have facilities in the area and provisions to protect these facilities and to provide access are included as part of this resolution.

A field investigation was conducted for this request and the condition in the area are taken into account for this resolution. The subject north-south alley is currently blocked off with fencing north of the petitioners property; and the open part of the alley is used only to access the petitioners property and for public utilities. The subject east-west alley is also blocked with fencing, overgrown and impassible; also the adjoining block is a blighted area on the south. On the north side of the east-west alley is a wall enclosing the parking lot of Assumption Grotto Church. The request

for encroachment is for an existing fence and will not compromise pedestrian and vehicular traffic on Seymour Avenue, 80 feet wide.

I am offering the attached resolution for your consideration.

Respectfully submitted,
RICHARD DOHERTY
City Engineer

City Engineering Division — DPW
By Council Member Benson:

Resolved, All that part of the north-south public alley, 18 feet wide, lying easterly of and adjoining Lots 1, 2 and 3 also lying westerly of and adjoining Lot 4 "Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 45, Page 8, Wayne County Records; also lying easterly of Lots 1 and 2 "Elodie Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 47, Page 93 of Plats, Wayne County Records.

Also including that part of the north-south alley deeded to the City of Detroit on May 1, 1923 described as: Land in the City of Detroit, Wayne County, Michigan being part of Section 12, T1S, R12E and being more particularly described as follows: Beginning at the southeasterly corner of Lot 3 "Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 45, Page 8, Wayne County Records; thence N89°21'30"E along the southerly line of said Lot 3 extended 20.03 feet, thence S26°38'30"W along a line parallel to Gratiot Avenue 75.00 feet; thence S89°21'30"W along the northerly line of Seymour Avenue, 60 feet wide, 20.03 feet; thence N26°38'30"E along a line parallel to Gratiot Avenue 75.00 feet to the point of beginning.

Also all of the east-west public alley, 18 feet wide and variable width, lying southerly of and adjoining part of Section 12, T1S, R12E and lying northerly of and adjoining Lots 4 thru 9, both inclusive of "Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 45, Page 8, Wayne County Records; and lying northerly of and adjoining Lots 3 thru 8, both inclusive, of "Elodie Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 47, Page 93 of Plats, Wayne County Records; and lying northerly of and adjoining Lots 519 thru 523, both inclusive "Seymour and Troester's Montclair Heights Subdivision No. 1 of part of Section 12, T1S, R12E, Gratiot Twp., Wayne County Michigan" as recorded in Liber 47, Page 12 of Plats, Wayne County Records.

Be and the same are hereby vacated as a public alleys and hereby converted

into a private easement for public utilities of the full width of the alley, which easement shall be subject to the following covenants and agreements, uses, reservations and regulations, which shall be observed by the owners of the lots abutting on said alleys and by their heirs, executors, administrators and assigns, forever to wit:

First, Said owners hereby grant to and for the use of the public easement or right-of-way over said vacated public alleys herein above described for the purposes of maintaining, installing, repairing, removing, or replacing public utilities such as water mains, sewers, gas lines or mains, telephone, electric light conduits or poles or things usually placed or installed in a public alley in the City of Detroit, with the right to ingress and egress at any time to and over said easement for the purpose above set forth,

Second, Said utility easement or right-of-way in and over said vacated alleys herein above described shall be forever accessible to the maintenance and inspection forces of the utility companies, or those specifically authorized by them, for the purpose of inspecting, installing, maintaining, repairing, removing, or replacing any sewer, conduit, water main, gas line or main, telephone or light pole or any utility facility placed or installed in the utility easement or right-of-way. The utility companies shall have the right to cross or use the driveways and yards of the adjoining properties for ingress and egress at any time to and over said utility easement with any necessary equipment to perform the above mentioned task, with the understanding that the utility companies shall use due care in such crossing or use, and that any property damaged by the utility companies, other than that specifically prohibited by this resolution, shall be restored to a satisfactory condition,

Third, Said owners for their heirs and assigns further agree that no buildings or structures of any nature whatsoever including, but not limited to, concrete slabs or driveways, retaining or partition walls, shall be built or placed upon said easements, nor change of surface grade made, without prior approval of the City Engineering Division — DPW,

Fourth, That if the owners of any lots abutting on said vacated alleys shall request the removal and/or relocation of any existing poles or other utilities in said easement; such owners shall pay all costs incidental to such removal and/or relocation, unless such charges are waived by the utility owners,

Fifth, That if any utility located in said property shall break or be damaged as a result of any action on the part of said owners or assigns (by way of illustration but not limitation) such as storage of excessive weights of materials or con-

struction not in accordance with Section 3, mentioned above, then in such event said owners or assigns shall be liable for all costs incidental to the repair of such broken or damaged utility; and

Provided, That an easement, the full width of the existing right-of-way, is reserved for the Detroit Water and Sewerage Department for the purpose of installing, maintaining, repairing, removing, or replacing any sewers, water mains, fire hydrants and appurtenances, with the right of ingress and egress at any time to, and over said easement for the purpose above said forth; and be it further

Provided, That free and easy access to the sewers, water mains, fire hydrants and appurtenances within the easement is required for Detroit Water and Sewerage Department equipment, including the use of backhoes, bull dozers, cranes or pipe trucks, and other heavy construction equipment, as necessary for the alteration or repair of the sewer or water main facilities; and be it further

Provided, That the Detroit Water and Sewerage Department retains the right to install suitable permanent main location guide post over its water mains at reasonable intervals and at points deflection; and be it further

Provided, That said owners of the adjoining property, for themselves, their heirs and assigns, agree that no building or structure of any nature whatsoever, including porches, patios, balconies, etc., shall be built upon or over said easement, or that no grade changes or storage of materials shall be made within said easement without prior written approval and agreement with the Detroit Water and Sewerage Department; and be it further

Provided, That the Public Lighting Department requires that no structures or barricades be built over PLD installations or on existing utility easement areas. As per PLD requirements, any structure proposed to be built shall maintain 10 feet horizontal clearance from the overhead PLD lines and installations also any structure proposed to be built shall maintain a minimum of 3 feet horizontal clearance and 12 feet vertical clearance from the PLD conduit bank and manholes. The contractor should take necessary precautions not to damage PLD utilities, if they plan to use heavy earth moving equipment. The contractor will be liable for any damages to any PLD underground facilities. PLD requires unrestricted easement rights with 24-hour heavy vehicle access in order to maintain their facilities; and be it further

Provided, That if any time in the future, the owners of any lots abutting on said vacated alley shall request the removal and/or relocation of the aforementioned utilities in said easement, such owners shall pay all costs incident to such

removal and/or relocation. It is further provided that if sewers, water mains, and/or appurtenances in said easement shall break or be damaged as a result of any action on the part of the owner, or assigns, then in such event, the owner or assigns shall be liable for all costs incident to the repair of such broken or damaged sewers and water mains, and shall also be liable for all claims for damages resulting from his action; and be it further

Provided, That if it becomes necessary to remove the paved alley returns at the entrance (into Seymour Avenue or Grover Avenue), such removal and construction of new curb and sidewalk shall be done under city permit and inspection according to City Engineering Division — DPW specifications with all costs borne by the abutting owner(s), their heirs or assigns; and further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.

Provided, That the Planning and Development Department Director is hereby authorized to issue quit-claim deeds to transfer the following described parcel of land for the fair market value and/or other valuable consideration:

Land in the City of Detroit, Wayne County, Michigan being part of Section 12, T1S, R12E and being more particularly described as follows: Beginning at the southeasterly corner of Lot 3 "Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 45, Page 8, Wayne County Records; thence N89°21'30"E along the southerly line of said Lot 3 extended 20.03 feet, thence S26°38'30"W along a line parallel to Gratiot Avenue 75.00 feet; thence S89°21'30"W along the northerly line of Seymour Avenue, 60 feet wide, 20.03 feet; thence N26°38'30"E along a line parallel to Gratiot Avenue 75.00 feet to the point of beginning.

Also Resolved, That the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to the Rays Check for the existing fence and parking area encroachment. The encroachment being described as follows: Land in the City of Detroit, Wayne County, Michigan being the northerly 3 feet of Seymour Avenue, 80 feet wide, lying southerly of and adjoining the South line of Lot 2 "Elodie Nuytten's Subdivision of part of Section 12, T1S, R12E, City of Detroit, Wayne County, Michigan" as recorded in Liber 47, Page 93 of Plats, Wayne County Records.

Provided, That if there is any addition and/or cost for the removing and/or rerouting of any utility facilities, it shall be done at the expense of the petitioner and/or property owner; and be it further:

Provided, By approval of this petition the Detroit Water and Sewerage Department (DWSD) does not waive any of its rights to its facilities located in the right-of-way, and at all times, DWSD, its agents or employees, shall have the right to enter into the right-of-way to maintain, repair, alter, service, inspect, or install its facilities. All costs incident to the damaging, dismantling, demolishing, removal and replacement of structures or other improvements herein permitted and incurred in gaining access to DWSD's facilities for maintenance, repairing, alteration, servicing or inspection caused by the encroachment shall be borne by the petitioner. All costs associated with gaining access to DWSD's facilities, which could normally be expected had the petitioner not encroached into the right-of-way, shall be borne by DWSD; and be it further

Provided, That all construction performed under this petition shall not be commenced until after (5) days written notice to DWSD. Seventy-two (72) hours notice shall also be provided in accordance with P.A. 53 1974, as amended, utilizing the MISS DIG one call system; and be it further

Provided, That construction under this petition is subject to inspection and approval by DWSD forces. The cost of such inspection shall, at the discretion of DWSD, be borne by the petitioner; and be it further

Provided, That if DWSD facilities located within the right-of-way shall break or be damaged as the result of any action on the part of the petitioner, then in such event the petitioner agrees to be liable for all costs incident to the repair, replacement or relocation of such broken or damaged DWSD facilities; and be it further

Provided, That the petitioner shall hold DWSD harmless for any damages to the encroaching device constructed or installed under this petition which may be caused by the failure of DWSD's facilities; and be it further

Provided, That if at any time in the future the petitioner shall request removal and/or relocation of DWSD's facilities in the right-of-way being encroached upon the petitioner agrees to pay all costs for such removal and/or relocation; and be it further

Provided, That the contractor call MISS DIG 72 hours prior to starting any underground construction where they plan the underground encroachment; and be it further

Provided, That any structure proposed to be built shall maintain 10 feet of horizontal clearance from overhead PLD lines and installations also any structure proposed to be built shall maintain a minimum of 3-feet horizontal clearance and 12-feet vertical clearance from the PLD

conduit bank and manholes. The contractor and/or the petitioner will be liable for any damages to any PLD underground facilities. PLD requires unrestricted 24-hour heavy vehicle access to the encroachment area to maintain their facilities; and be it further

Provided, That should the encroachment require any removal or relocation of DTE electric facilities that the cost of such removal or relocation be borne by the petitioner; and Provided be it further

Provided, That Ray's Check Cashing or its assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction. Also, if it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for maintenance of encroachments such work shall be according to detail permit application drawings submitted to the City Engineering Division — DPW prior to any public right-of-way construction; and further

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings and Safety Engineering Department. The encroachments shall be constructed and maintained under their rules and regulations; also in accord with plans submitted to and approved by these departments; including the Public Lighting Department (if necessary), and the Traffic Engineering Division — DPW (if necessary); and further

Provided, That all cost for the construction, maintenance, permits and use of the encroachments shall be borne by Ray's Check Cashing and further

Provided, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments shall be borne by Ray's Check Cashing or its assigns. Should damages to utilities occur Ray's Check Cashing or its assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

Provided, If it becomes necessary to repair or replace the utilities located or to be located within the public rights-of-way, by acceptance of this permission Ray's Check Cashing for themselves, or their assigns, (by acceptance of permits for construction near underground utility lines, conduits, or mains) waives all claims for damages to the encroaching installations and agree to pay all costs incurred in their removal (or alteration), if removal (or alteration) becomes necessary; and further

Provided, That Ray's Check Cashing shall file with the Finance Department and/or City Engineering Division — DPW an indemnity in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance by Ray's Check Cashing of the terms thereof. Further, Ray's Check Cashing shall agree to pay all claims, damages or expenses that may arise out of the maintenance of the proposed encroachments; and further

Provided, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW; and further

Provided, This encroachment portion of the resolution is revocable at the will, whim or caprice of the City Council, and Ray's Check Cashing acquires no implied or other privileges hereunder not expressly stated herein; and further

Provided, That the encroachment permits shall not be assigned or transferred without the written approval of the City Council; and further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution and indemnity agreement with the Wayne County Register of Deeds.

