



# City of Grand Island

Tuesday, June 10, 2014

Council Session

## Item F-1

**#9492 – Consideration of Vacating N. Wheeler Avenue from 3rd Street to W. South Front Street**

Staff Contact: Robert Sivick

# Council Agenda Memo

**From:** Robert J. Sivick, City Attorney

**Meeting:** June 10, 2014

**Subject:** Consideration of Vacating a Portion of N. Wheeler Avenue

**Item #'s:** F-1

**Presenter(s):** Robert J. Sivick, City Attorney

## Background

Earlier this year the City of Grand Island (City) Legal Department received an inquiry from the Downtown Business Improvement District 2013 (BID) regarding the legality of placing a statue in the park like area located at the intersection of Third Street and N. Wheeler Avenue in Downtown Grand Island. The Legal Department responded it would provide an answer once the relevant documents were examined. Those documents would consist of the Ordinance vacating the street where the park like area is located and the agreement regarding the maintenance of the park like area by the BID.

After an exhaustive search it was determined no written maintenance agreement existed between the City and the BID and the portion of N. Wheeler Avenue where the park like area is located meaning it was never vacated. The only evidence of any official action consisted of a Resolution approved by the Grand Island City Council (Council) on April 10, 1989 directing “[t]he City of Grand Island shall take appropriate steps to close Wheeler Street between South Front Street and Third Street for development of the Wheeler Street Project, including a pedestrian mall and parking area.” No further subsequent action was taken by the Council to vacate N. Wheeler Avenue between Third and W. South Front Streets but at some point the pedestrian mall and parking area were developed.

## Discussion

Vacating N. Wheeler Avenue between Third Street and W. South Front Street is necessary to legitimize the existing situation. The Ordinance before you for consideration this evening does so but unlike other instances of the City vacating streets, the real estate upon which the street sits will not be conveyed to the owners of abutting property. Rather, the Ordinance specifically states the City reserves title in said real estate subject

to existing easements, rights of way, and license agreements. This insures no private individual or entity will be able to sell, rent, or deviate from the present use of N. Wheeler Avenue between Third and W. South Front Streets without the approval of the Council. In addition, it will allow the City in the future to reestablish that portion of Wheeler Avenue and open it to vehicular traffic or convert it to any other use it sees fit.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Move to reestablish that portion of N. Wheeler Avenue between Third Street and W. South Front Street as a street open to vehicular traffic.

### **Recommendation**

The City Administration recommends the Council approve Ordinance No. 9492 vacating N. Wheeler Avenue between Third Street and W. South Front Street.

### **Sample Motion**

Move to approve Ordinance No. 9492 vacating N. Wheeler Avenue between Third Street and W. South Front Street.



ORDINANCE NO. 9492

An Ordinance to vacate that portion of N. Wheeler Street in the City of Grand Island lying between Third Street and W. South Front Street subject to any existing easements, rights of way, and license agreements to include the City of Grand Island reserving title in the real property upon which said portion of N. Wheeler Street is located.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

- I. That portion of N. Wheeler Street located between Third Street and W. South Front Street is hereby vacated and will no longer be designated as a street unless and until further action by the Council.
- II. The City of Grand Island reserves and does not relinquish its title in the real estate upon which that portion of N. Wheeler Street between Third Street and W. South Front Street is located.
- III. The City consents to the present, specific use of that portion of N. Wheeler Street located between Third Street and W. South Front Street as follows:
  - A. That portion of N. Wheeler Street lying perpendicular to Third Street and extending one hundred and thirty-two (132) feet away from Third Street as a park like area;
  - B. That portion of N. Wheeler Street lying perpendicular to the aforementioned park like area and extending sixteen (16) feet away from and between the park like area and W. South Front Street as an alley; and

Approved as to Form	☒ _____
June 6, 2014	☒ City Attorney

ORDINANCE NO. 9492 (Cont.)

- C. That portion of N. Wheeler Street lying perpendicular to the aforementioned alley and extending one hundred and thirty-two (132) feet away from and between the alley and W. South Front Street as a parking area.
- IV. The present, specific uses of that portion of N. Wheeler Street located between Third Street and W. South Front Street as detailed above are subject to any existing easements, rights of way, and license agreements unless and until further action by the Council.
- V. The City reserves the right to reestablish that portion of N. Wheeler Street located between Third Street and W. South Front Street as a through street carrying vehicular traffic or designate the aforementioned real estate for any other use it deems fit.
- VI. Any ordinances or parts of ordinances or Resolutions in conflict are hereby repealed.
- VII. This ordinance shall be in full force and will take effect from and after its passage and publication pursuant to law.

Enacted: June 10, 2014.

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Jay Vavricek, Mayor

ATTEST:

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RaNae Edwards, City Clerk