



# City of Muscatine



## AGENDA ITEM SUMMARY

DATE:10-1-20

City Council

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### STAFF

Andrew Fangman, Assistant Community Development Director

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### SUBJECT:

Final reading of an ordinance vacating a portion of street and alley right-of-way (Spring Street Between 2nd Street and 3rd Street • a portion of 3rd Street between Mad Creek and the Railroad Track • Alley in Block 26 • Alley in Block 27) & a Resolution Executing Deed to Convey the Vacated Right of Way to the Adjoining Property Owner

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### EXECUTIVE SUMMARY:

HNI Corporation has filed for the vacation of four areas of right of way, located in an area bounded by Oak Street, Mad Creek, 3rd Street, and 2nd Street. Specifically, Spring Street between 2nd Street and 3rd Street; the portion of 3rd Street that is located between Mad Creek and the railroad track; the alley located in Block 26; and the alley located in Block 27. With approval of the final reading of the ordinance vacating this right of way, it is then necessary for council to approve a resolution directing for the Mayor and City Clerk to sign the deed conveying this right of way to HNI, the adjoining property owner.

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### STAFF RECOMMENDATION

The Planning and Zoning Commission voted at their August meeting to recommend approval of this request. Staff concurs with this recommendation. The right of way being proposed for vacation serves no current public purpose, nor is there any foreseen future use of this right of way for any public purpose. The subject was very likely already vacated decades ago; approval of this vacation will removal all uncertainty about its status as public right of way. See attached memo for a more detailed discussion of the staff recommendation.

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### BACKGROUND/DISCUSSION

The right of way that is the subject of this request has long been functioning as vacated and privately owned right of way. It was most likely vacated in the very beginning of the Twentieth Century. Sanborn Fire Insurance Maps for this area show that private development began to occupy the subject right of way between 1899 and 1919 (see relevant excerpts of these Sanborn maps on page 4). The non-public use of the subject right of way has continued to the present day. To remove any uncertainty to their title to the subject area, HNI is requesting that the City take action to vacate these areas of right of way and deed them to HNI as the adjoining landowner.

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#### CITY FINANCIAL IMPACT

No direct financial impact.

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#### ATTACHMENTS

1. Memo
2. Ordinance vacating right of way
3. A Resolution Conveying Vacated Right-of-Way to HNI Corporation
4. Deed to HNI Corporation

## COMMUNITY DEVELOPMENT

### MEMORANDUM

**To:** Mayor and City Council Members  
**Cc:** Carol Webb, City Administrator  
Jodi Royal-Goodwin, Community Development Director

**Date:** October 1, 2020

**Re:** An Ordinance Vacating A Portion of Street and Alley Right-Of-Way (Spring Street Between 2nd Street And 3rd Street • A Portion Of 3rd Street Between Mad Creek and the Railroad Track • Alley in Block 26 • Alley in Block 27)

&

Resolution Executing Deed to Convey the Vacated Right of Way to the Adjoining Property Owner

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**INTRODUCTION:** HNI Corporation has filed for the vacation of four areas of right of way, located in an area bounded by Oak Street, Mad Creek, 3<sup>rd</sup> Street, and 2<sup>nd</sup> Street. Specifically, Spring Street between 2<sup>nd</sup> Street and 3<sup>rd</sup> Street; the portion of 3<sup>rd</sup> Street that is located between Mad Creek and the railroad track; the alley located in Block 26; and the alley located in Block 27. Maps and legal description of the right of way proposed for vacation can be found on the following pages. Upon vacation of this right of way, HNI is requesting that the vacated right of way be deeded to HNI as the adjoining landowner.

**BACKGROUND:** The right of way that is the subject of this request has long been functioning as vacated and privately owned right of way. It was most likely vacated in the very beginning of the twentieth century. Sanborn Fire Insurance Maps for this area show that private development began to occupy the subject right of way between 1899 and 1919 (*see relevant excerpts of these Sanborn maps on page 4*). The non-public use of the subject right of way has continued to the present day.

For decades the subject right of way has been incorporated into the legal descriptions of many of the adjoining parcels which are now owned by HNI. Additionally, in 1957, as part of a levee improvement project, the City reacquired a small portion of the alley right of way in Block 26, the deed for this transaction describes this alley as having been previously vacated. All this strongly indicates that the right of way that is subject to this request was very likely vacated between 100 to 120 years ago.

An ordinance vacating public right of way is a required step in conveying title to public right of way to a private party. However, there are no ordinances vacating the subject right of way on file with the Muscatine Recorder's Office. Nor were any such ordinances located in search of records at City Hall, however City records from the late nineteenth and early twentieth century are organized in such a manner that searching for a record, without knowing exactly what year it occurred in, is extremely difficult.

The failure to record an ordinance vacating right of way is not an unprecedented occurrence. However, the lack of such a recorded ordinance clouds any claimed title to such right of way. To remove any uncertainty to their title to the subject area, HNI is requesting that the City take action to vacate these are of right of way and deed them to HNI as the adjoining landowner.

The subject right of way has not been developed as public streets or alleys. HNI is the owner of the adjoining parcels, and no parcels owned by someone other than HNI can be accessed using the right of way subject to this request.

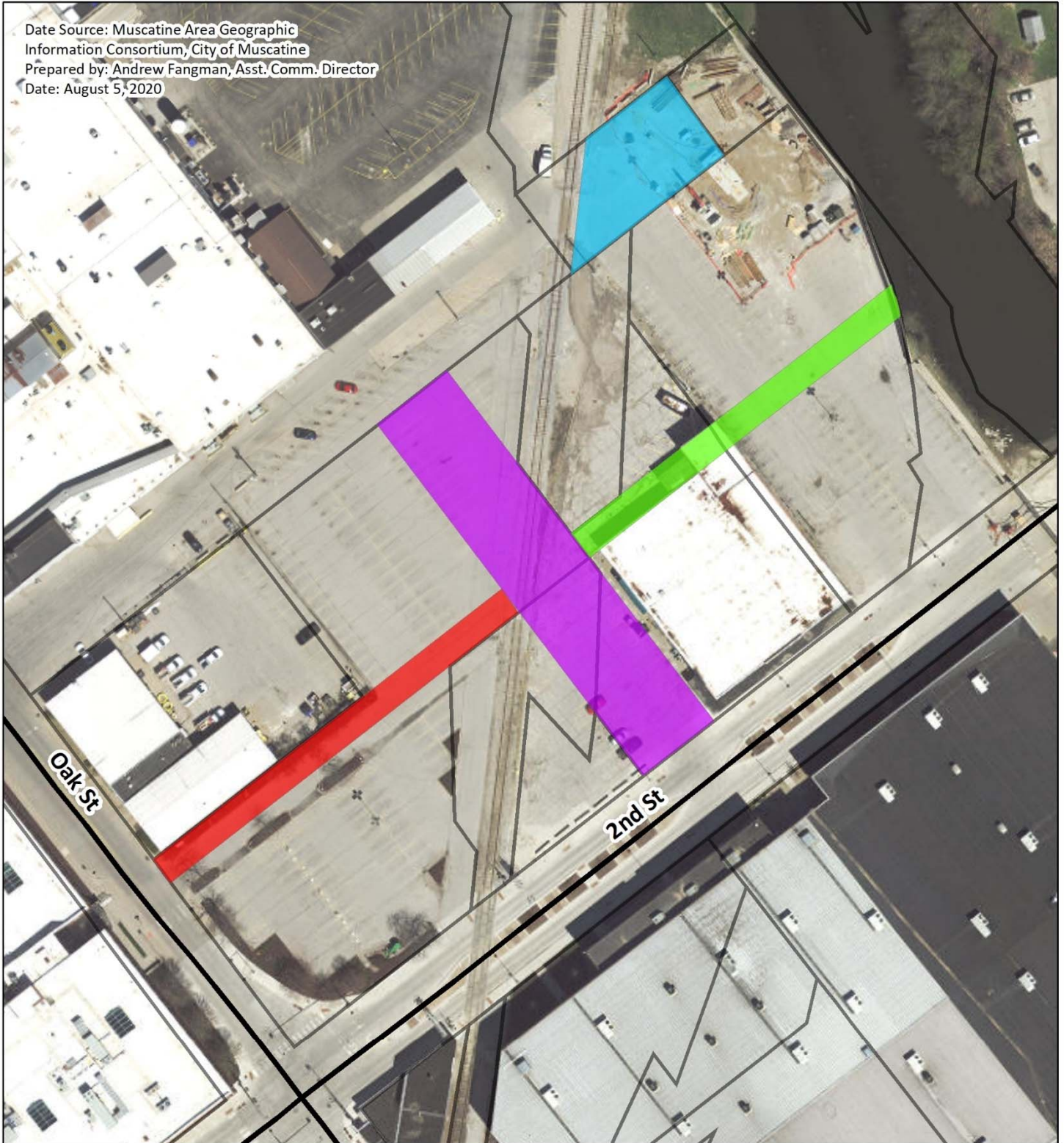
With approval of the final reading of the ordinance vacating this right of way, it is then necessary for council to approve a resolution directing for the Mayor and City Clerk to sign the deed conveying this right of way to HNI, the adjoining property owner.

**RECOMMENDATION/RATIONALE:** The Planning and Zoning Commission voted at their August meeting to recommend approval of this request. Staff concurs with this recommendation. The right of way being proposed for vacation serves no current public purpose, nor is there any foreseen future use of this right of way for any public purpose. The subject was very likely already vacated decades ago, approval of this vacation will removal all uncertainty about its status as public right of way.

**BACKUP INFORMATION:**

1. Ordinance vacating right of way
2. A Resolution Conveying Vacated Right-of-Way to HNI Corporation
3. Deed to HNI Corporation

Date Source: Muscatine Area Geographic  
Information Consortium, City of Muscatine  
Prepared by: Andrew Fangman, Asst. Comm. Director  
Date: August 5, 2020



## MUSCATINE Right of Way Vacation PZROW-6

Area A - Alley in Block 27

Area D - A Portion of 3rd Street

Area B - Alley in Block 26

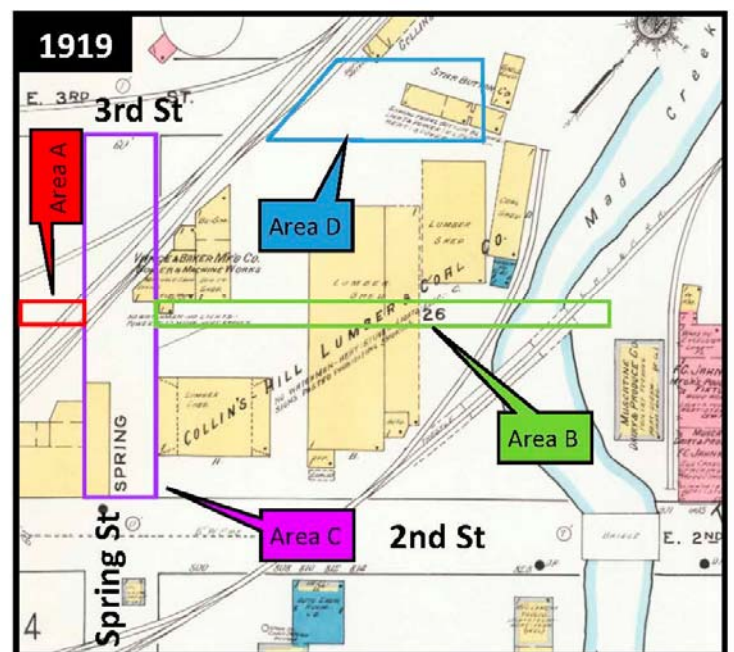
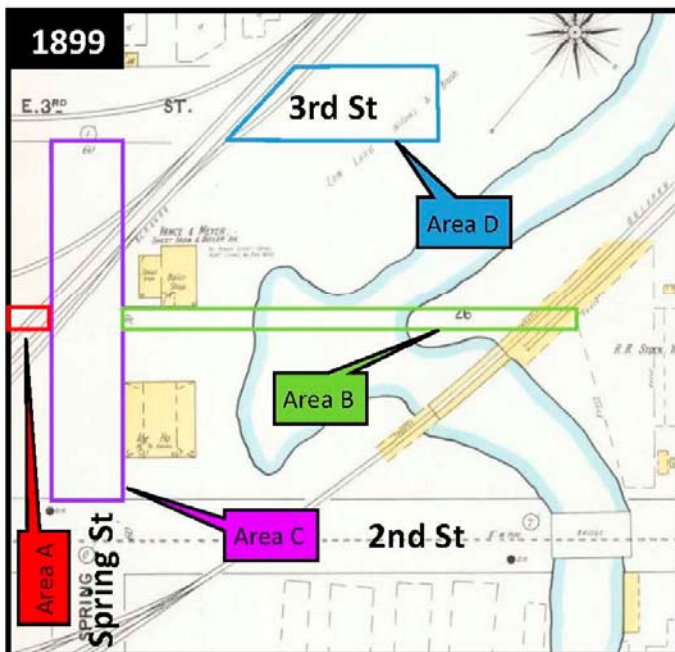
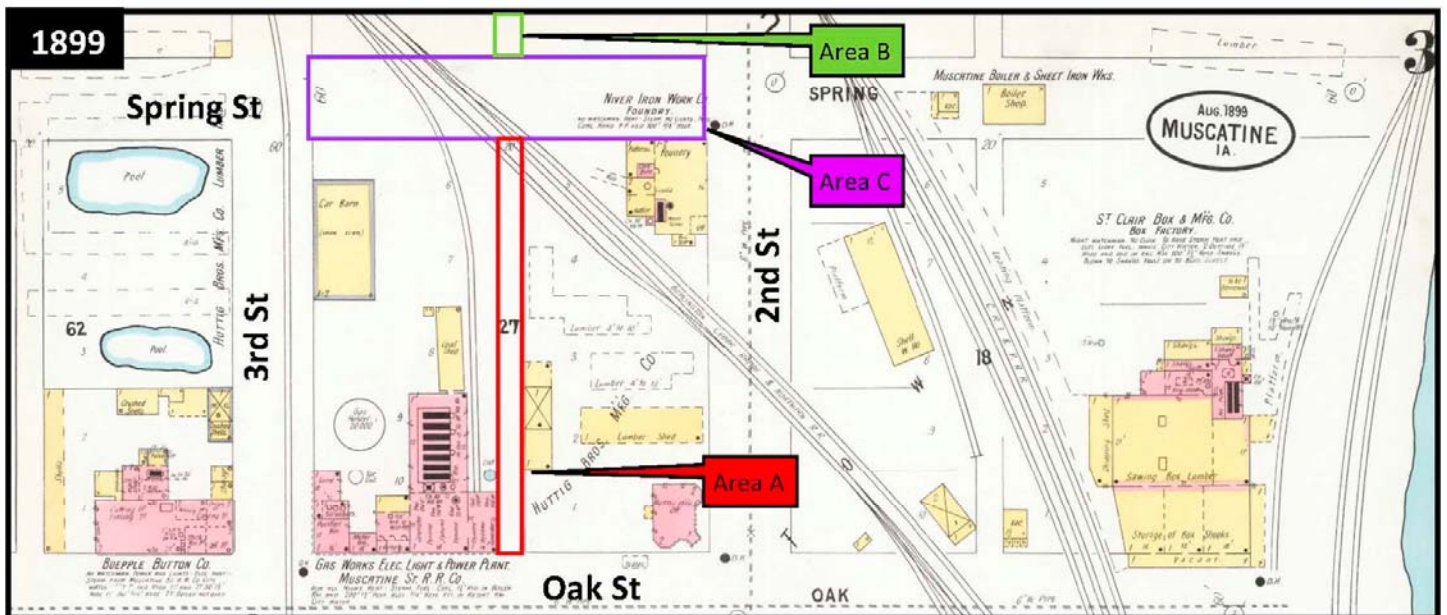
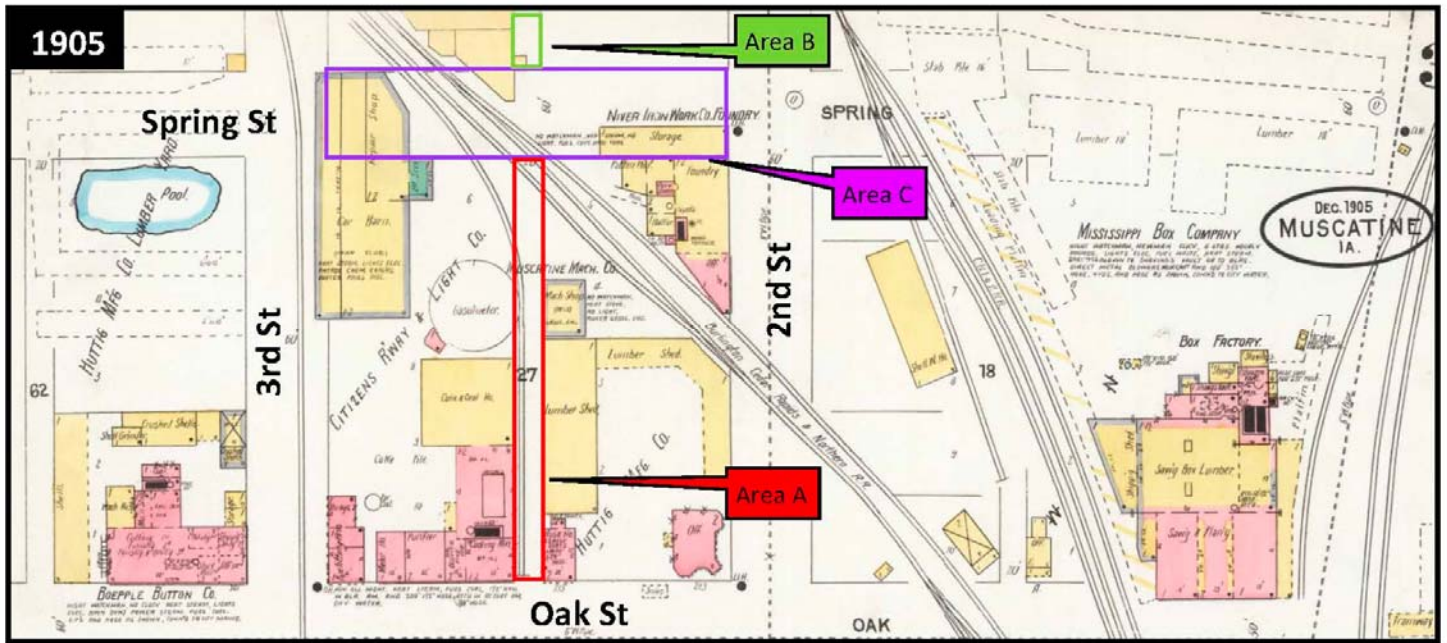
Parcel Lines

Area C- A Portion of Spring St

0 20 40 80 120 160  
Feet

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DESCRIPTIONS TO BE VACATED FOR HNI –

BLOCK 27

ALL OF THE ALLEY IN BLOCK 27 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

BLOCK 26

ALL OF THE ALLEY IN BLOCK 26 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, EXCEPT FOR THAT PART CONVEYED TO THE CITY OF MUSCATINE AS DESCRIBED AT BOOK 172 PAGE 147, OFFICE OF THE RECORDER, MUSCATINE COUNTY, IOWA.

SPRING STREET

ALL OF SPRING STREET BETWEEN SECOND STREET AND THIRD STREET ADJACENT TO BLOCKS 26 AND 27 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

3<sup>RD</sup> STREET

ALL OF THIRD STREET ADJACENT TO BLOCKS 26 AND 63 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, EAST OF THAT PART PREVIOUSLY VACATED AND DESCRIBED AT ORDINANCE #79229 AND WEST OF THAT PART DESCRIBED AT BOOK 254 PAGE 833.

**ORDINANCE NO. 2020-0304**

**AN ORDINANCE VACATING A PORTION OF STREET AND ALLEY RIGHT-OF-WAY (SPRING STREET BETWEEN 2ND STREET AND 3RD STREET • A PORTION OF 3RD STREET BETWEEN MAD CREEK AND THE RAILROAD TRACK • ALLEY IN BLOCK 26 • ALLEY IN BLOCK 27) IN THE CITY OF MUSCATINE, IOWA**

**WHEREAS**, HNI Corporation has requested that the City of Muscatine vacate and then sell a portion of street and alley right-of-way situated within in the City of Muscatine, Iowa; and

**WHEREAS**, the Planning and Zoning Commission of the City of Muscatine has recommended approval of the vacation of certain portions of street and alley right-of-way the City of Muscatine, Iowa; and

**WHEREAS**, on September 3, 2020, the City Council of the City of Muscatine has conducted a public hearing, on said vacation request;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, AS FOLLOWS:**

Section I. The following described real estate be vacated by the City of Muscatine, Iowa:

ALL OF SPRING STREET BETWEEN SECOND STREET AND THIRD STREET ADJACENT TO BLOCKS 26 AND 27 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

and

ALL OF THIRD STREET ADJACENT TO BLOCKS 26 AND 63 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, EAST OF THAT PART PREVIOUSLY VACATED AND DESCRIBED AT ORDINANCE #79229 AND WEST OF THAT PART DESCRIBED AT BOOK 254 PAGE 833.

and

ALL OF THE ALLEY IN BLOCK 26 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, EXCEPT FOR THAT PART CONVEYED TO THE CITY OF MUSCATINE AS DESCRIBED AT BOOK 172 PAGE 147, OFFICE OF THE RECORDER, MUSCATINE COUNTY, IOWA

and

ALL OF THE ALLEY IN BLOCK 27 OF THE ORIGINAL TOWN, IN THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

Section II. Any Ordinance or part thereof in conflict or inconsistent with the provisions of this Ordinance is hereby repealed.

**PASSED, APPROVED AND ADOPTED this 3<sup>rd</sup> day of September, 2020.**

**BY THE CITY COUNCIL OF THE  
CITY OF MUSCATINE, IOWA**

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**Diana Brodersen, Mayor**

**Attest:**

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**Carol Webb, City Clerk**

1<sup>st</sup> Reading September 3, 2020

2<sup>nd</sup> Reading September 17, 2020

3<sup>rd</sup> Reading October 1, 2020