MEMORANDUM

TO: Mayor Allender and Common Council
FROM: Wade Nyberg
DATE: July 24, 2020
RE: 11 Main, LLC Request for No-Build Easement

11 Main, LLC is requesting a no-build easement over a City-owned parking lot on Saint Joseph Street between 5th and 4th Streets. This memo is to summarize the meetings city staff has had with Mr. Ehlman regarding this request and to present options for the Council’s consideration.

Background
The City owns 8 lots across St. Joe from Hardees and Trinity Lutheran’s Prayer Park. This property is a paved parking lot, which is currently leased to maximum capacity. 11 Main purchased property immediately east of the parking lot, which consists of 2 lots between the parking lot and the Garage co-working space. 11 Main is planning a two-story building that will take up the entirety of the two lots. (Zero setbacks allow for building from property line to property line.) While the building can be placed up against the property line, the building and fire codes do not allow windows on the shared property line. Windows on what would be the west side of the new building can be built with a no-build easement over the City’s property. Otherwise, windows could only be located on the north and south sides of the building. 11 Main wants to include windows on the west side to create office space that will be attractive to the professionals the building is planned to house. More information on the request is available in the letters linked to the agenda item. The City property can continue to be used as a surface parking lot with a no-build easement in place. Any future development would have to yield to a permanent no-build easement.

Options
11 Main is requesting a permanent no-build easement be granted to it without monetary consideration. Staff has met with Mr. Ehlman to discuss alternatives. The action that the Council can take include the following:

1. Grant a permanent easement that will prevent the City from building in the easement area. This easement could be granted with or without monetary compensation from 11 Main to the City.
2. Grant a revocable easement that could be revoked when/if structural development occurs on the city property.
   The last no-build easement given by the City was granted to a neighbor of the Dahl Arts Center. The easement was made revocable should the City want to build in the area, which would require the neighboring building to remove its windows and comply with all codes. There was a six-month notice requirement for revocation.

3. A covenant agreement could be made for the new building.
   Another option used in the past was allowing the new building to be built as proposed, but burdening the 11 Main property with a covenant agreement requiring either acquisition of an easement in the future, or requiring the building to remodel to meet codes in the event structural development of the city property occurs.

4. Take no action.
   The Council can refuse the request and take no further action if it so desires.

City Staff’s Position

City staff favors options 2 or 3, which allows this project to move ahead, but preserves the City’s options for the future in developing the parking lot property. While it does provide some uncertainty for the future, it is a compromise that allows 11 Main to continue its investment in the area without foreclosing any of the City’s future opportunities. Should a permanent easement be granted, staff recommends requiring 11 Main to pay the value of the property interest transferred.

The considerations supporting this position include the following:

- The vision for this area of downtown is to move surface parking away from Saint Joseph and Main Streets.
- A surface parking lot is not the highest and best use for the property.
- The eastern 10 feet of the city property has value, and when a future multi-story structure is considered, the impact of that 10 feet is multiplied.