

2/18/2005

25-O-05

AN ORDINANCE

**Authorizing the City Manager to Execute an
Easement Agreement with Foster Development, LLC, for
Water Main Installation on the Public Right-of-Way
adjacent to 819-823 Foster Street**

WHEREAS, Foster Development, LLC, owns the property, commonly located at 819-823 Foster Street, on which a three- (3-) story residential building will be built lot line to lot line; and

WHEREAS, the proposed building is built to the right-of-way line, and the water main cannot be installed inside the private property; and

WHEREAS, the water main will be located in the City's public alley as indicated on Exhibit A; and

WHEREAS, the public alley is located north of Foster Street and east of the building; and

WHEREAS, the water main is located so as to encroach on the City's public right-of-way to a maximum of one hundred nine feet (109') along the east property line along the alley, and five feet (5') in the alley perpendicular to the building; and

WHEREAS, the City and Foster Development, LLC, are desirous of entering into an Easement Agreement providing for the afore-described encroachment of the duct work and the connectors on the public right-of-way; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into said Agreement,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston, an Easement Agreement, for the term of ninety-nine (99) years and the sum of one thousand forty-five and no/100 dollars (\$1,045.00) attached hereto as Exhibit A and made a part hereof, between the City of Evanston and Foster Development, LLC, providing for the encroachment of a water main on the public right-of-way adjacent to 819-823 Foster Street.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional terms and conditions of the Agreement as may be determined to be in the best interests of the City.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That this Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: February 28, 2005

Adopted: March 14, 2005

Approved:

March 15, 2005

Lorraine H. Morton

Lorraine H. Morton, Mayor

Attest:

Mary P. Morris

Mary P. Morris, City Clerk

Approved as to form:

[Signature]

Corporation Counsel

Exhibit 1 to 25-O-05

Easement for Water Main Installation on Public Right-of-Way
Ninety-Nine Year Easement Agreement

This Easement Agreement is made and entered into this _____ day of March 2005, by and between the City of Evanston, Cook County, Illinois an Illinois municipal corporation (hereinafter, "Grantor") and Foster Development L.L.C, an Illinois Limited Liability Company (hereinafter "Grantee"):

WHEREAS, the property located at 819-823 Foster Street is a three story residential building built lot line to lot line; and

WHEREAS, the proposed building is built to the right-of-way line, and the water main cannot be installed inside the private property; and

WHEREAS, water main will be located in the public alley as indicated on Exhibit 'A'; and

WHEREAS, the public alley is located north of Foster Street and east of the building; and

WHEREAS, the water main is located so as to encroach on Grantor's public right-of-way to a maximum of 109 feet along the east property line along the alley; and 5 feet in the alley perpendicular to the building; and

WHEREAS, Grantor and Grantee are desirous of entering into an easement agreement providing for the afore-described encroachment of the duct work and the connectors on the public right-of-way,

NOW, THEREFORE, in consideration of the foregoing recitals, the various covenants herein, and the sum of \$3225 and other good and valuable consideration, receipt of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. Grantor hereby grants and conveys to Grantee, its successors, grantees, agents, and assigns, an easement on the real estate in question to construct, maintain, repair, replace the duct work as particularly described and located on the plat of survey dated August 10, 2004, prepared by Gremley & Bredermann, attached hereto and made a part hereof as Exhibit 'A'.

2. The easement is granted on property owned by Grantor, on the real estate legally described on the attached Exhibit 'A'.
3. The Grantor expressly retains its interest in and rights to the use and occupation of the easement premises subject to the easement rights herein granted.
4. The grant of easement gives Grantee surface, above surface and sub-surface rights. Grantee may carry out such surface, above surface, and subsurface work as may be necessary to effectuate the purpose of this easement.
5. Grantee will obtain all required permits at its own expense.
6. Grantee may occupy the public right-of-way to effectuate the purpose of this easement, provided that Grantee will schedule all work related to the duct work in such a manner and at such times as to cause minimum disruption to the flow of traffic. Grantee shall not obstruct the public right-of-way without first having notified the City's Engineering Division as to the date and time during which said obstruction will exist and without first having obtained the City Engineer/Senior Engineer's consent to said closing, which consent shall not be unreasonably withheld.
7. Grantee will promptly, after placement of the water main is completed, restore the adjacent surface to its pre-placement condition, including any repaving which may be associated therewith. All such restoration is to be done at Grantee's sole expense and in compliance with all applicable legislation.
8. This easement is for a term of ninety-nine (99) years, unless terminated, renewed, or modified by the parties. At the termination of this easement, Grantee shall, at the City's option, be required to remove the encroachments at its own expense and restore the easement property and surface.
9. This Easement shall not be assigned, other than to the 819-823 Foster Street Condominium Association, without the express written consent of the Grantor authorized by its City Council.
10. Grantee, its successors, grantees, agents and assigns, by acceptance of this Easement, shall indemnify and save harmless the Grantor against any and all loss, damage, claims, injuries, deaths and cost or expenses caused by,

arising out of, or alleged to arise out of this Easement, including but not limited to attorney's fees.

11. The making, execution, and delivery of this Easement by Grantor have been induced by no representations, statements, warranties, or agreements other than those herein expressed. This Agreement embodies the entire understanding of the parties; and there are no further or other agreements or understandings, written or oral, in effect between the parties, their officers, agents, representatives, and employees, relating to the subject matter hereof. This Easement may be amended or modified only by an instrument of equal formality, signed by the duly authorized officers of the respective parties.
12. Grantee shall record this easement at its own expense within 90 days of passage of Ordinance 25-O-05 by the City Council. Grantee shall, promptly after recordation, provide a copy of same to Grantor's City Engineer.
13. Any notices required or given hereunder shall be in writing and shall be delivered via return receipt mail, addressed to the parties as follows, unless otherwise indicated in the future.

If to Grantor: City Engineer/Senior Engineer
 Evanston Civic Center
 2100 Ridge Avenue
 Evanston, IL 60201

with a copy to: Law Department
 Evanston Civic Center
 2100 Ridge Avenue
 Evanston, IL 60201

If to Grantee: Foster Street Development L.L.C
 3416 N. Ashland Avenue
 Chicago, IL 60657
 Attn: Gary DeStefano

Notice shall be deemed effective upon receipt.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement at Evanston, Illinois, on the date first above written.

Accepted by:

CITY OF EVANSTON,
COOK COUNTY, ILLINOIS

By: _____
Gary DeStefano
Title: President

By: _____
Julia A. Carroll
Title: City Manager

