

Date October 3, 2022

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF A  
PERMANENT EASEMENT FOR BUILDING ENCROACHMENT IN VACATED  
URBANDALE AVENUE RIGHT-OF-WAY LOCATED SOUTH OF AND ADJOINING 4041  
URBANDALE AVENUE TO MARIGNY, LLC FOR 2,055.00**

**WHEREAS**, on October 25, 2010, by Roll Call No. 10-1765, the City Council of the City of Des Moines, Iowa passed Ordinance No. 14,967 vacating a portion of Urbandale Avenue right-of-way adjoining 4041 Urbandale Avenue for use as a sidewalk cafe, as legally described below, (hereinafter “Easement Area”); and

**WHEREAS**, Marigny, LLC, owner of 4041 Urbandale Avenue, has offered to the City of Des Moines (“City”) the purchase price of \$2,055.00 for the purchase of a Permanent Easement for Building Encroachment (hereinafter “Easement”) in said property to allow for the use, repair, renovation, and maintenance of an attached raised platform and surface encroachments from the adjoining building into the Easement Area, which price reflects the fair market value of the City Property as determined by the City’s Real Estate Division; and

**WHEREAS**, there is no known current or future public need or benefit for the Easement proposed to be conveyed, and the City will not be inconvenienced by the conveyance of said Permanent Easement for Building Encroachment; and

**WHEREAS**, on September 12, 2022 by Roll Call No. 22-1411, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance be set down for hearing on October 3, 2022, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to convey the Easement was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance of a Permanent Easement for Building Encroachment in the vacated City right-of-way lying south of and adjoining 4041 Urbandale Avenue, Des Moines, Iowa, as described herein, are hereby overruled and the hearing is closed.

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2. There is no public need or benefit for the Easement proposed to be conveyed, and the public would not be inconvenienced by reason of the conveyance of said Permanent Easement for Building Encroachment, as legally described, to Marigny, LLC, for \$2,055.00, subject to any and all easements, restrictions and covenants of record, and said conveyance is hereby approved:

A PART OF VACATED URBANDALE AVENUE RIGHT-OF-WAY BEING IN THE SOUTH ½ OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5<sup>TH</sup> P.M., IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 9, BEAVER GLEN, AN OFFICIAL PLAT; THENCE SOUTH 65°38'13" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 9, A DISTANCE OF 225.23 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 65°38'13" EAST ALONG SAID SOUTHERLY LINE, 62.37 FEET; THENCE SOUTH 69°21'47" WEST, 2.17 FEET; THENCE NORTH 65°38'13" WEST, 4.47 FEET; THENCE SOUTH 69°21'47" WEST, 6.39 FEET; THENCE NORTH 65°38'13" WEST, 35.26 FEET; THENCE NORTH 20°38'13" WEST, 2.29 FEET TO THE POINT OF BEGINNING AND CONTAINING 274 S.F.

(VACATED BY ORDINANCE NO. 14,967, PASSED OCTOBER 25, 2010.).

3. The Mayor is authorized and directed to sign the Offer to Purchase and Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
4. Upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Building Encroachment and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



**Roll Call Number**

**Agenda Item Number**

**55**

**Date** October 3, 2022

Moved by \_\_\_\_\_ to adopt. Second by \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno  
Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, Laura Baumgartner, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Laura Baumgartner, City Clerk

