

★ **Roll Call Number**

13-1160

**Agenda Item Number**

63B

**Date** July 15, 2013

**SET HEARING ON AMENDED AND RESTATED BILLBOARD LEASE WITH CLEAR CHANNEL OUTDOOR, INC. ON CITY-OWNED PROPERTY LOCATED AT 227 63<sup>RD</sup> STREET**

**WHEREAS**, on August 28, 1995 by Roll Call No. 95-3186, the City Council approved a lease agreement with Clear Channel Outdoor, Inc. ("CCO") for excess City-owned real property on 63<sup>rd</sup> Street south of Grand Avenue, locally known as 227 63<sup>rd</sup> Street ("Leased Premises"), for the purpose of erecting and maintaining an advertising billboard upon the Leased Premises; and

**WHEREAS**, on February 7, 2000, by Roll Call No. 00-368, the City Council approved an extension of said lease agreement; and

**WHEREAS**, said lease has expired, and CCO has proposed to convey real property owned by CCO and locally known as 849 Army Post Road to the City by Special Warranty Deed, as consideration and in exchange for lease extensions for the existing billboard upon the Leased Premises and at a second leased location, and the City's Real Estate Division has determined that the fair market value of CCO's property at 849 Army Post Road is equal to the estimated fair market value of the proposed lease extensions such that consideration given by CCO and by the City as part of the proposed property exchange is equal; and

**WHEREAS**, on July 15, 2013, by Roll Call No. 13-1158, the City Council approved a Real Property Exchange and Grant Agreement and Reservation of Perpetual Easements with CCO and authorized acquisition of real property located at 849 Army Post Road, Des Moines from CCO as proposed by CCO, in exchange for and subject to City Council approval of the lease extensions; and

**WHEREAS**, City staff and CCO have negotiated an Amended and Restated Billboard Lease, as on file in the office of the City Clerk, which provides in part that CCO's use of the Leased Premises will be extended on an annual basis for a twenty (20) year period, subject to CCO's compliance with the Real Property Exchange and Grant Agreement and the City's closing on acquisition of 849 Army Post Road from CCO; and

**WHEREAS**, the negotiated Lease further provides that CCO will be allowed to convert its sign within the Leased Premises to electronic or digital format only if first approved for conversion in accordance with City ordinance and/or policy, and that the City is prohibited from placing or maintaining permanent objects on or adjoining the Leased Premises that obstruct the view of the billboards, but that temporary obstructions are permitted following notice to CCO; and

**WHEREAS**, the negotiated Lease further provides that the City may renew or terminate the lease, at the City's discretion, following the initial 20-year period; that the City may terminate the Lease during the initial 20-year period only in the event of CCO default of the lease terms, lease assignment by CCO without prior City consent, and/or failure of CCO to fulfill the Real Property Exchange and Grant Agreement, following a notice and cure period; that in the event the City needs the Leased Premises for a public project during the initial 20-year period, CCO will agree to early lease termination in exchange for payment of agreed-upon just compensation or the City may use its eminent domain authority to terminate the Lease; and that CCO is required to remove the billboards (above-ground, at ground level, and up to 1' below-ground) at CCO expense in the event of termination; and

**WHEREAS**, the negotiated Lease further provides that CCO may remove a specifically identified tree in the line of sight of the billboard in accordance with the City's tree ordinance and policy, as applicable; and

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WHEREAS, there is no known current or future public need or benefit for the real property to be leased, and the City will not be inconvenienced by the lease of the Leased Premises subject to the terms and conditions set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The City of Des Moines, Iowa proposes to lease the real property on 63rd Street south of Grand Avenue, locally known as 227 63rd Street, legally described as follows, to Clear Channel Outdoor, Inc. on an annual basis for a period of twenty (20) years and as partial consideration for conveyance to the City of real property located at 849 Army Post Road, pursuant to the terms and conditions set forth herein above and included in the Amended and Restated Billboard Lease for the Leased Premises:

THE EAST 50.0 FEET OF THE WEST 75.0 FEET OF THE SOUTH 30.0 FEET OF LOT 8, MURROWDALE PLAT NO.2, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

2. A public hearing will be held on July 29, 2013 at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa. At that time, the City Council will consider the above described proposal and any other(s) submitted prior to or during the public hearing.

3. The City Clerk is hereby authorized and directed to publish notice of the proposal and hearing in the form hereto attached, all in accordance with Section 362.3 of the Iowa Code.

4. There will be no monetary proceeds associated with this lease.

(Council Communication No. 13- 376 )

Moved by Meyer to adopt and refer to the City Manager to report on the trees in the area and on the length of the lease.

APPROVED AS TO FORM:

Glenna K. Frank, Assistant City Attorney

Table with columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL (7).

MOTION CARRIED APPROVED T. M. Franklin Council Mayor

CERTIFICATE

I, DIANE RAUH, 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.

Diane Rauh City Clerk