

★ Roll Call Number

13-1230

Agenda Item Number

46A

Page 1

Date July 29, 2013

**HEARING ON AMENDED AND RESTATED BILLBOARD LEASE WITH CLEAR CHANNEL
OUTDOOR, INC. ON CITY-OWNED PROPERTY LOCATED WEST OF I-235 FREEWAY
BETWEEN OVID AVNEUE AND HULL AVENUE**

WHEREAS, on March 15, 1982, by Roll Call No. 962, the City Council approved a lease agreement with Clear Channel Outdoor, Inc. ("CCO") for excess City-owned real property located west of I-235 Freeway between Ovid Avenue and Hull Avenue ("Leased Premises") for the purpose of erecting and maintaining an advertising billboard upon the Leased Premises; and

WHEREAS, on January 4, 1993, by Roll Call No. 93-77, the City Council approved an extension of said lease agreement; and

WHEREAS, said lease has now 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

★ Roll Call Number

13-1230

Agenda Item Number

46A

Page 2

Date July 29, 2013

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; and

WHEREAS, on July 15, 2013, by Roll Call No. 13-1159, it was duly resolved by the City Council that the proposed lease of excess City-owned real property located west of I-235 Freeway between Ovid Avenue and Hull Avenue to Clear Channel Outdoor, Inc. be set down for hearing on July 29, 2013, at 5:00 p.m., in the City Council Chambers; and

WHEREAS, due notice of the proposal was published as provided by law in the Des Moines Register, setting forth the time and place for hearing on the proposal; and

WHEREAS, in accordance with City Council direction, those interested in this proposed lease, 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:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed Amended and Restated Billboard Lease, as described herein, are hereby overruled and the hearing is closed.
2. There is no current public need for the property described below and the public would not be inconvenienced by reason of the proposed lease of City-owned real property located west of I-235 Freeway between Ovid Avenue and Hull Avenue, 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:

A BILLBOARD AREA BEING THE EAST 90 FEET OF THE WEST 1350 FEET OF THE NORTH 75 FEET OF LOT 28, OVID HEIGHTS, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. That the Amended and Restated Billboard Lease between the City and Clear Channel Outdoor, Inc. for the above-described property is hereby approved, the Mayor is authorized and directed to sign said Lease and the Memorandum thereto, and the City Clerk is authorized and directed to attest to the Mayor's signature on the Lease.
4. The City Clerk is authorized and directed to forward the original of the Lease and Memorandum thereto, 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 the Memorandum to be recorded.
5. The Real Estate Division Manager is authorized and directed to forward the original of the Memorandum of Lease, 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, and to maintain the original Lease in the City's Land Record files.

★ Roll Call Number

13-1230

Agenda Item Number

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6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail copies of the documents to the lessee.
7. The City Manager and/or his designee, the City's Real Estate Division Manager, are hereby authorized and directed to administer and monitor said Lease, and, if needed, to proceed with and execute documents pertaining to the termination of the Lease if Clear Channel Outdoor, Inc. fails to fulfill the contract terms required therein, following approval as to form of the City's Legal Department.
8. There will be no monetary proceeds associated with this Lease.

(Council Communication No. 13- 400)

Moved by Meyer to adopt.

APPROVED AS TO FORM:

Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

RM

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

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.

T. M. Franklin Mayor

Diane Rauh City Clerk