



**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF EAST 36<sup>TH</sup> STREET, EAST 36<sup>TH</sup> COURT, ARTHUR AVENUE, EAST 40<sup>TH</sup> COURT, AND LOT Q RIGHT-OF-WAY LOCATED IN THE FOURMILE CREEK FLOODPLAIN AND CONVEYANCE TO POLK COUNTY CONSERVATION BOARD FOR THE LOWER FOURMILE CREEK GREENWAY PROJECT**

**WHEREAS**, on July 15, 2019, by Roll Call No. 19-1121, the City Council of the City of Des Moines, Iowa (“City) approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement (“28E Agreement) between the City of Des Moines and the Polk County Conservation Board (“PCCB”); and

**WHEREAS**, the 28E Agreement provides for the transfer of certain lands from the City to Polk County to be managed by PCCB in accordance with the Lower Fourmile Creek Greenway Master Plan; and

**WHEREAS**, on September 16, 2024, by Roll Call No. 24-1235, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a City-initiated request to vacate the following segments of public street located in the Lower Fourmile Creek Floodplain (“Property”) to allow for the removal of the roadways and the restoration of the areas for incorporation into the Lower Fourmile Creek Greenway:

- East 36<sup>th</sup> Street from East Sheridan Avenue to Arthur Avenue,
- East 36<sup>th</sup> Court from East Sheridan Avenue to Arthur Avenue,
- Arthur Avenue to the west of East 37<sup>th</sup> Street,
- East 40<sup>th</sup> Court to the south of East Jefferson Avenue,
- Lot Q between the vacated Four Mile Drive and the south line of Lot Q,

subject to the reservation of easements for existing utilities in place until such time as they are abandoned or relocated at the Polk County Conservation Board’s expense; and

**WHEREAS**, in accordance with the 28E Agreement and Iowa Code 364.7, the City proposes to vacate and convey the Property to Polk County, Iowa, for the use and benefit of the Polk County Conservation Board at no cost for the public purpose of the Lower Fourmile Creek Greenway Project, subject to the following conditions:

- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same.
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization.
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan.



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24-1470

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**WHEREAS**, there is no known current or future public need for the street right-of-way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and conveyance of said Property; and

**WHEREAS**, on October 7, 2024, by Roll Call No. 24-1344, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the street right-of-way be set for hearing on October 21, 2024, 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 vacate and convey the street right-of-way was given 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 vacation and 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 vacation and conveyance of street right-of-way as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of East 36<sup>th</sup> Street from East Sheridan Avenue to Arthur Avenue, East 36<sup>th</sup> Court from East Sheridan Avenue to Arthur Avenue, Arthur Avenue to the west of East 37<sup>th</sup> Street, East 40<sup>th</sup> Court to the south of East Jefferson Avenue, and Lot Q between the vacated Four Mile Drive and the south line of Lot Q, Des Moines, Iowa, legally described as follows, and said vacation is hereby approved:

ALL OF LOT V, AND

ALL THAT PART OF LOT M LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 857, AND

ALL THAT PART OF LOT N LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 893,

ALL IN FOUR MILE, AN OFFICIAL PLAT,

AND

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LOT J, ELMWOOD PARK, AN OFFICIAL PLAT, -EXCEPT THE FOLLOWING DESCRIBED AREA: BEGINNING AT THE SOUTHEAST CORNER OF LOT 248 IN SAID ELMWOOD PARK; THENCE NORTH ALONG THE WEST LINE OF SAID LOT J, A DISTANCE OF 70.0 FEET; THENCE EAST AND PERPENDICULAR TO SAID WEST LINE TO THE EAST LINE OF SAID LOT J; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT J; THENCE WEST ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING-,

AND

ALL OF LOT Q IN SAID ELMWOOD PARK,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. The proposed conveyance of such vacated street right-of-way, as legally described below, to Polk County, Iowa for the use and benefit of the Polk County Conservation Board at no cost for the public purpose of the Fourmile Creek Greenway Project, subject to the following conditions:

- a) Reservation of a permanent easement upon the Property for the continued use and maintenance of any public utilities now in place, including those for the benefit of the City of Des Moines and other public utilities, with the right of entry for servicing same.
- b) Reservation of a permanent easement upon the Property for existing and/or future recreation trail.
- c) The Property will revert back to the City in the event that PCCB ceases to exist or loses its eligibility status as a public entity or qualified conservation organization.
- d) Compliance with the Lower Fourmile Creek Greenway Master Plan.

and said conveyance is hereby approved:

ALL OF LOT V, AND

ALL THAT PART OF LOT M LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 857, AND

ALL THAT PART OF LOT N LYING SOUTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF LOT 893,

ALL IN FOUR MILE, AN OFFICIAL PLAT,

AND

LOT J, ELMWOOD PARK, AN OFFICIAL PLAT, -EXCEPT THE FOLLOWING DESCRIBED AREA: BEGINNING AT THE SOUTHEAST CORNER OF LOT 248 IN SAID ELMWOOD PARK; THENCE NORTH ALONG THE WEST LINE OF SAID LOT J, A DISTANCE OF 70.0 FEET; THENCE EAST AND PERPENDICULAR TO SAID WEST LINE TO THE EAST LINE OF SAID LOT J; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID LOT J; THENCE WEST ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING-,

AND

ALL OF LOT Q IN SAID ELMWOOD PARK,

ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Quit Claim Deed for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Clerk is authorized and directed to forward the original of the Quit Claim Deed, 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 Quit Claim Deed, 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 Quit Claim Deed and a copy of the other documents to the grantee.
8. There will be no proceeds associated with the conveyance of this property.

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Moved by Westergaard to adopt. Second by Gatto.

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno

Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN	✓			
SIMONSON	✓			
VOSS	✓			
COLEMAN	✓			
WETERGAARD	✓			
MANDELBAUM	✓			
GATTO	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

Connie Boesen 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