

★ Roll Call Number

23-1106

Agenda Item Number

47

Date August 7, 2023

**RESOLUTION TO DISMISS HEARING FOR VACATION OF SEGMENTS OF INGERSOLL AVENUE RIGHT-OF-WAY AND CONVEYANCE OF EASEMENTS FOR BUS SHELTER ENCROACHMENT ON CITY-OWNED PROPERTY TO DES MOINES AREA REGIONAL TRANSIT AUTHORITY FOR \$1,320.00**

**WHEREAS**, Des Moines Area Regional Transit Authority (hereinafter “DART”) wishes to acquire permanent easements on portions of City right-of-way located on the north and south sides of Ingersoll Avenue between 28<sup>th</sup> Street and Martin Luther King, Jr. Parkway, as legally described below (“Easement Areas”), for the purpose of constructing, operating and maintaining a DART bus stop shelter on each location; and

**WHEREAS**, On May 23, 2022, by Roll Call 22-0789, City Council of the City of Des Moines received and filed a communication from the Greater Des Moines Public Art Foundation (GDMPAF) recommending approval of the DART art bus shelter concepts as presented by The Avenues; and

**WHEREAS**, DART and the City Real Estate Division have negotiated the terms of six permanent easements which include: (1) DART’s installation and use of the Bus Shelter, including any approved artwork, shall comply with all City, State and Federal ordinances and regulations; (2) DART, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Areas prior to accessing the Easement Areas, and, except in the case of emergency, access to the Easement Areas shall be limited to the times set forth in such permits; (3) the bus shelter, including any approved artwork, shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and DART shall certify to the City that the bus shelter, and any approved artwork, has been constructed and located within the Easement Areas as shown on approved plans and specifications; and

**WHEREAS**, DART shall pay to the City \$1,320.00 for costs incurred by the City in preparing necessary documentation for bus shelter locations to allow for vacation and conveyance of easements within the right-of-way and no additional consideration is required in accordance with Iowa Code §364.7(3); and

**WHEREAS**, the vacation of said portions of City right-of-way located along Ingersoll Avenue, and the conveyance of said Easements for Bus Shelter Encroachment on City-owned Property will not inconvenience the City or public.

**WHEREAS**, on June 12, 2023, by Roll Call No. 23-0822, it was duly resolved by the City Council of the City of Des Moines, Iowa that the proposed vacation of said Ingersoll Avenue right-of-way and the conveyance of said Easements for Bus Shelter Encroachment on City-owned Property be set for hearing on June 26, 2023 at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, on June 26, 2023, by Roll Call No. 23-0937, it was duly resolved by the City Council of the City of Des Moines, Iowa that the hearing on the proposed vacation of said Ingersoll Avenue right-of-way

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and the conveyance of said Easements for Bus Shelter Encroachment on City-owned Property be continued to June 26, 2023 at 5:00 p.m. in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa , to allow DART and the City of Des Moines additional time finalize the terms and conditions of the permanent easements; and

**WHEREAS**, DART and the City of Des Moines have thus far been unable to reach an agreement on the specific terms and conditions of the permanent easements, particularly the insurance and indemnification requirements, and the City Real Estate Division thereby recommends that the public hearing on the vacation of portions of City right-of-way located along Ingersoll Avenue, and the conveyance of said Easements for Bus Shelter Encroachment on City-owned Property to DART be dismissed until such time as agreement has been reached between DART and the City of Des Moines on the terms and conditions of the permanent easements and said easements have been signed by DART; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the public hearing for vacation of segments of Ingersoll Avenue right-of-way and the conveyance to DART of the Easements for Bus Shelter Encroachment on City-owned Property, be and is hereby dismissed.

Moved by Mandelbaum to adopt. Second by Boesen.

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	6			1

J. M. Frank 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  
Laura Baumgartner, City Clerk