

**MLA Part 2 Training  
Conference Room City Hall  
Monday, January 18, 2016  
5:30-6:30 P.M.**

**SPENCER CITY COUNCIL MEETING  
COUNCIL CHAMBERS, CITY HALL  
Monday, January 18, 2016  
Regular Council Meeting  
6:30 o'clock P.M.**

- 1. ROLL CALL:** Petska, Orrison, Bomgaars, Swanson, Hanson, Prentice, Moriarty
  
- 2. Consent Agenda:**
  - A. Minutes of January 4, 2016:
  
  - B. Licenses: Class C Liquor License with Sunday Sales for Monterrey Mexican Restaurant; and Class B Beer Permit with Sunday Sales for Godfather's Pizza;
  
  - C. Approve Residential Tax Abatement for Ruth L. Van Berkum-Hansen at 1304 West 16<sup>th</sup> Street;
  
  - D. Motion to Set Public Hearing for February 15, 2016 for An Ordinance Amending Title 9, Chapter 3, Section 3(D) and Title 9, Chapter 4A, Section 3 (D) to Provide for Maintenance of Historic Front Yard Setback Distances for Residential Properties Abutting North Grand Avenue;
  
  - E. Motion to Set Public Hearing for February 15, 2016 for An Ordinance Amending Title 9, Chapter 9, Section 2A of the Spencer City Code to Permit "Indoor Sports and Recreation" as a Special Exception Use in the "E" Heavy Industrial Zoning District;
  
  - F. Motion: Approve Purchase of 5 Car Computers for the Police Department for \$16,634.95 from Karl Chevrolet from CIP & Police Operations;
  
  - G. Motion: Approve Sewer Refunds for Bill Caskey at 317 West 18<sup>th</sup> Street for \$435.67 and 411 South Grand Avenue for \$627.24
  
  - H. Motion: Approve Recyclable Cardboard and Electronic Waste Disposal Ban Feasibility Study for Northern Plains Regional Landfill Planning Area with Barker Lemar Engineering Consultants for \$19,500 from EMS Fund;

### 3. Old Business:

#### A. **Roll Call: An Ordinance Amending Title 7, Chapter 14 of the Spencer City Code to Permit the Operation of All Terrain Vehicles on City Streets, Final Filing;**

Per the request from the Public Safety Committee, staff is bringing forth an ordinance that would allow for ATV's on certain designated streets which leads to the Corporate Limits.

**Please see Don's memo below:**

FROM: Donald J. Hemphill, Spencer City Attorney

DATE: December 14, 2015

RE: Revised ATV Ordinance Amendment

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Provided with this Memo is the latest draft of an Ordinance amending Title 7, Chapter 14 of the Spencer City Code permitting operation of all-terrain vehicles on city streets. The changes incorporated in this draft are found in 7-14-4 G which requires ATVs to be operated on a direct route from the place of storage to designated city streets then to the corporate limits. The second change is found in Section 6 which creates a new ordinance section 7-14-8 which requires the owner of an ATV to obtain a city permit and place a city sticker on the ATV.

The proposed amendment is quite complicated; primarily, because there are three classes of ATV use contemplated under the Ordinance. The first class are those uses permitted under state law; these uses include surveying, operations by public agencies, for snow removal on adjacent sidewalks, and by Spencer Police, Fire Department and Clay County Sheriff's Officers. These uses are permitted under Section 7-14-2 of the existing Ordinance.

The second class of use is for snow removal. This use is now permitted under Section 7-14-2 F of the City Code. In the enclosed amendment, these provisions are now included in Section 7-14-3. These uses are currently permitted and I understand are to continue.

The third class of use is described in new Section 7-14-4: "Limited Operation on City Streets". These are the new provisions which allow resident owners of ATVs to operate them to designated streets and then to the corporate limits.

New Section 6 creating new 7-14-8 contains the permit requirements. Permits are not required for the uses permitted by state law, but are required for snow removal uses and limited general operation. An initial permit fee of \$100 is provided with annual renewal fees of \$20. The application is to indicate the route on which the ATV will be operated. When a permit is approved, the City will issue a sticker which must be prominently displayed on the ATV.

The Ordinance Amendment provided is an attempt to incorporate the thoughts of a majority of the Council members, as understood by the City Manager and me.

**I do not recommend adoption of the Ordinance. I believe that use of ATVs on city streets should not be expanded because such operations are dangerous. I also believe that the costs of administration and the difficulty of enforcement outweigh the limited benefit which might be provided to a few citizens.**

**Please see the Police Chiefs memo below:**

As Police Chief in Spencer, I was not against the ATV ordinance with the provision that the city could get permission from the state to cross the Grand Ave Bridge. Since this is not a possibility, I am against the ordinance. I took a look at the revised ATV ordinance that City Attorney Don Hemphill has drafted. I see that this ordinance will be prone to several violations. First, the ordinance allows for Spencer citizens to operate only to and from the owner's residence or place of storage, to the nearest point of the corporate boundary by the most direct route. I do not believe this will be followed. I believe that the most direct route will be blurred depending on the intended destination of the rider as well as the return route of the rider or the location of said storage of ATV. This will not limit the amount of roads used for travel as it was intended. In checking with the Clay County Recorder's Office, 376 ATV's were registered. If one third of these ATV's were located in Spencer, one only has to draw a map from 125 random locations to the closest city limit boundary to realize a large amount of city streets would be utilized. Enforcement efforts could be hampered. A driver only has to say he was taking his vehicle from storage and, at some point, the officer will be unable to verify the route. (buddy's residence, storage building, or a change of address). Iowa code section 321I.27 allows for Officers to stop and inspect an ATV operated, parked or stored on public streets, highways, public lands, public ice, or designated riding trails of the state to determine if the ATV is registered, numbered, or equipped as required by Iowa code. I believe that if this ordinance is passed a large amount of police/ATV rider interactions will occur resulting in a negative view for the city and the police department. Current City and Iowa codes do not allow ATV's or snowmobiles to be ridden in city parks, campgrounds, or city trails. Currently, if you look at the tracks in the snow at west Leech Park, under the Grand Ave Bridge, and the adjacent campground, you will find evidence of violations. To pass this ordinance would only complicate an already abused city code. An analogy I have for this situation is Iowa code section 321.194 Special Minors' license (school permits). This license entitles the student to drive between the hours of 5am and 10pm over the most direct and accessible route between the licensee's residence and schools of enrollment for the purpose of attending duly scheduled courses of instruction and extracurricular activities within the school district. Now, I believe this is one of the most abused licenses the state of Iowa has. Although, in theory, this license serves a purpose for students that live farther than 1 mile from school, the tendency over time is to stretch the most direct route, stretch the times in which the license is valid to drive and or stretch the extracurricular activities (to include church functions). Parents eventually get comfortable with their child's driving and allow them to push the boundaries of the license for the sake of convenience. This would be the same situation if the revised ATV ordinance is passed. Wood in theory this would be difficult to enforce. In closing, I believe the revised ordinance drafted does not represent the goals the people that signed the petition were after. The initial goal I heard included transportation to work, running errands, and fishing. As a last resort, the idea of simply getting the ATV out of city limits to take advantage of the relaxed county ordinance seemed to grab momentum. Although good in theory, this ordinance, if passed, will provide a challenge for the citizens intending to use the ordinance as well as the law enforcement officials intending to uphold it. In my mind, as soon as the State denied the crossing of the Grand Ave Bridge, the original intent of the petition was defeated. Therefore, I am against the passing of the ordinance.

#### **4. New Business:**

##### **A. Roll Call: Resolution Approving Amendment of Protective and Restrictive Covenants for Green Industrial Center First Addition;**

Enclosed in your packet information is a Resolution amending the Protective Covenants for the Green Industrial Center First Addition. There are four articles being amended. The proposed amendment is 3-fold. **To reflect the changes that were made for the Hensell Project, Clarification of the meaning of part of the text as interpreted by the Covenants Committee and a new recommendation**

##### **1. Article V, Section 5.1 "Permitted Uses of Property"**

**7. Major Food Processing – Reflects changes due to the Hensell Project.**

**8. Local Utility Services and Utility Substations – Interpretation made by the Covenants Committee.**

**2. Article V. Section 5.2, “Prohibited Uses”**

**This section was deleted and replaced as follows:**

“No manufacturing, processing or research activities involving animals or animal byproducts, except Major Food Processing as defined in the Spencer Zoning Code, shall be permitted in the subdivision. – **Reflects changes due to the Hensell Project.**

**Article V, Section 5.2.17, “Prohibit Uses”** – Is amended to provide:

“Slaughter of animals, except as permitted as “Major Food Processing” as defined in the Spencer Zoning Code”. – **Reflects changes due to the Hensell Project.**

**Article V, Section 5.2.14, “Prohibit Uses”**

This section prohibited the milling of flour, feed or grain and/or storage. **The Covenant Committee is recommending that the “end/or storage” be deleted.**

**I would recommend approval.**

**B. 2016 Fairway Woods Second Addition PCC Paving Project:**

Enclosed in your packet information is the legal proceedings needed to move forward on the 2016 Fairway Woods Second Addition PCC Paving Project. These proceedings for the most part are called for as this is a special assessment project

- 1. Roll Call: Preliminary resolution pursuant to Section 384.42 of the Iowa Code covering the 2016 Fairway Woods Second Addition PCC Paving Project;**
- 2. Roll Call: Resolution Approving and Adopting Preliminary Plans and Specifications, Estimate of Cost and Plat and Schedule;**
- 3. Roll Call: Resolution of Necessity for the 2016 Fairway Woods Second Addition PCC Paving Project;**
- 4. Roll Call: Resolution Ordering Detailed Plans, Specifications, Notice of Hearing, Notice to Bidders and Form of Contract;**
- 5. Roll Call: Resolution to provide for notice of hearing on proposed plans, specifications, form of contract and estimate of cost for the 2016 Fairway Woods Second Addition PCC Paving Project, and the taking of bids therefore (Bids Received 2/1/16 at 3:00 P.M. and Hearing 2/1/16 at 5:00 P.M.);**

**I would recommend approval of items 1-5.**

**C. Roll Call: Resolution Expressing Intent to Enter into a Development Agreement and to Provide Economic Development Support to Spencer Ag Center, LLC**

Enclosed in your packet is a Resolution expressing intent to enter into a Development Agreement and to Provide Economic Development Support to Spencer Ag Center, LLC.

Spencer Ag is proposing to build a new warehouse and retail location in the Green Industrial Center. The estimated cost for the project is \$1,800,000.00. They have also requested certain economic development incentives as well.

As you are aware, there are several steps involved by the City to put those incentives in place. In order to allow them to lock their interest rates in for their financing they need a commitment by the City that it is their intent to support the project.

The proposed development agreement would call for a 10 year rebate of taxes for the incremental value added to the district as a result of their project. They are eligible for the 10 year rebate of taxes as the project exceeds \$1,000,000.00. The City would also agree to give them a \$260,000.00 grant for the purchase of the 13+ acres of land from the City. In addition for them to build out their project they also would be required to be responsible for the legal costs for creation of the development agreement and other processes that the State requires. The estimated cost for that item is \$7,000.00. This process is similar to what the City did to bring Pioneer. **I would recommend approval.**

**5. Engineer's Report:**

**6. City Manager's Report:**

**7. Mayor's Report:**

-NW Iowa League Meeting 1/21/16 at Lake View  
-NW Iowa League Meeting 2/18/16 at Spencer  
-Employee Appreciation Event 2/5/16 at Event Center 5:30 registration, 6:30 dinner  
-Start time for 2/1/16 Council Meeting will be 5:00 P.M.

**8. Council/Comm. Reports:** Progress & Dev. And Public Safety 1/19/16, 6:00 P.M.  
Finance & Personnel, 1/25/16, 6:00 P.M. (followed by MLA Session)

**9. City Clerk's Report**

- Bills and Claims
- Funds Transfers

**10. Other Business/Opportunity to Address the Council**

**11. Adjourn**