

21-0-62

**AN ORDINANCE AMENDING CHAPTER 31 OF THE ZION MUNICIPAL CODE REGARDING POLLUTION CONTROL FACILITY SITING FOR THE CITY OF ZION, COUNTY OF LAKE, STATE OF ILLINOIS.**

**WHEREAS**, the City of Zion (“City”) is an Illinois non-home rule municipality organized and operating under the Illinois Municipal Code (65 ILCS 5/1, et seq.) (the “Code”); and

**WHEREAS**, the Mayor and the City Council (collectively, the “Corporate Authorities”) are committed to promoting the health, safety and general welfare of the residents of the City; and

**WHEREAS**, Chapter 31 of the City of Zion Municipal Code (the “Zion Municipal Code”) governs the regulation of pollution control siting in the City (the “Existing Regulations”); and

**WHEREAS**, the Corporate Authorities have determined that it is necessary to make certain revisions to the Existing Regulations to ensure the efficient regulation of pollution control siting in the City; and

**WHEREAS**, the Corporate Authorities find that it is in the best interests of the City’s residents to amend the Zion Municipal Code in accordance with this Ordinance;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Commissioners of the City of Zion, Lake County, Illinois, as follows:

Section 1. The foregoing recitals are incorporated as though fully set forth herein.

Section 2. The Zion Municipal Code is hereby amended by amending Chapter 31, Section 31-6 as follows (additions underlined):

Sec. 31-3. - Application for siting approval.

- (a) An original application, two paper, and a minimum of 40 electronic copies of the entire application, including all plans, exhibits, reports, maps and other submittals (other than the materials on file at the IEPA at time of the filing of the application), shall be delivered to the office of the city clerk. Upon receipt of any such application, the city clerk shall date stamp, retain and preserve the original application as the start of the public record on this matter. The clerk shall also date stamp and retain the two paper copies of the application and, with respect to the electronic copies of the application, deliver one to the mayor and each city council member. The clerk shall also deliver 12 copies to the city attorney's office.

The date on the stamp of the city clerk shall be considered the official filing date for all purposes relating to the time of filing. Receipt and acceptance of a petition by the city clerk is pro forma, and does not constitute an acknowledgment that the applicant has complied with the Act or this article. Should the petition be presented to the city clerk without the correct number of copies, in the incorrect form, or without the sections and fee described in this subsection, the petition shall be rejected by the city clerk.

- (b) A copy of the application shall be made available at City Hall for public inspection in the office of the city clerk and/or such other location as may be convenient to the operation of the city government. Another copy of the application shall be made available for purposes of fulfilling copy requests submitted to the city. The clerk may employ an outside copy service for this purpose and said service may be furnished a copy of the application for purposes of reproduction. Members of the public shall be allowed to obtain a copy of the application or any part thereof upon payment of the actual costs of reproduction. All copying requests shall be fulfilled by the city clerk within a reasonable time and in conformance with the Freedom of Information Act.

- (c) Applications shall include the following:

- (1) A written petition on recycled eight and one-half-inch by 11-inch paper setting forth or including the following:
- a. The identification of the applicant, owner of the subject property and the proposed operator of the facility. If the subject property is owned in a trust, then also identify the beneficiary(ies) of the trust(s). Also indicate for each whether the applicant, the landowner and the operator is an individual, partnership, limited liability company, corporation or unit of government. In the case of an individual, list his or her address. In the case of a partnership, submit the names of all partners. In the case of a limited liability company, submit the names and addresses of all members and managers and attach a certificate of good standing for the LLC from the Secretary of State's office. In the case of a corporation, submit the names and addresses of all officers and directors, and the names and addresses of all shareholders owning ten percent or more of the capital stock of the corporation; together with certified copies of the articles of incorporation in the State of Illinois or, if not incorporated in the State of Illinois, its certificate of authority to do business in the State of Illinois.

- b. The legal description of the proposed site of the facility and a street address or some other reasonable description of where the facility is to be located.
  - c. A description of the proposed facility, its operation and the anticipated longevity thereof.
  - d. The area to be served by the proposed facility and a statement of the needs in such area for such a facility.
  - e. The expected types, amounts and methods of treatment or storage of all wastes proposed for the site and the origins of these wastes.
  - f. The monitoring plan (including background analyses) for ground water and the procedure by which surface water and air will be monitored (including procedure by which the applicant will establish background levels).
  - g. The plans for closure of the site and continued monitoring thereafter.
  - h. Proof of notice pursuant to Section 39.2(b) of the Act.
- (2) Site plans showing details of the proposed facility including, but not limited to:
- a. Engineering cross-sections;
  - b. All existing wells within 1,000 feet of the subject property;
  - c. All monitoring systems, including, but not limited to, ground water, surface water, and air;
  - d. Fences, buildings and other structures;
  - e. Roads, entrances and driveways;
  - f. All core sample locations on the subject property; and
  - g. Location and purpose of any other drill-holes on the subject property.
  - h. Any information to demonstrate that the proposed facility is so designed, located and proposed to be operated in such a manner that the public health, safety and welfare will be protected, in addition to that which has been provided already pursuant to this article.
  - i. Whether any existing uses will be continued.
- (3) A detailed topographic survey of the subject property and the surrounding area— within 500 feet of the property line—indicating: topographical variations in no greater than two-foot intervals for the subject property and USGS data for the property within 500 feet of the property line (unless otherwise required); existing land uses; existing zoning; and, if applicable, the boundary of any floodway or flood plain. For all purposes related to any siting application, "floodway" and "flood plain" shall mean the regulatory "floodway" and regulatory "flood plain" as defined by the Federal Emergency Management Agency (FEMA). These features may shown on one or more exhibits.
- (4) A statement of the plan of operation for the proposed facility including, but not limited to, the following:

- a. Method of landfilling, incineration, composting, resource recovery or other process;
  - b. Hours of operation;
  - c. Personnel and their training;
  - d. Litter, vector, dust and odor control;
  - e. Surface drainage and erosion control (this information shall include proof from the Lake County Storm Water Management Committee that the proposed; design of the Facility has obtained technical compliance with the Lake County Watershed Development Ordinance and/or the U.S. Clean Water Act). If such proof is not available on the date of filing, then compliance with this requirement may be made a condition of siting approval;
  - f. Fire control;
  - g. Corrective actions for spills and other operational accidents; and
  - h. Coordination of operations with any other pollution control facility and/or recycling facility operated on, adjacent to, or within 500 feet of the facility.
- (5) Intentionally omitted.
- (6) A report analyzing the projected traffic impacts attributable to the proposed facility and describing how the proposed facility has been designed to minimize the impacts on existing traffic flows. The report shall include, but not be limited to the following:
- a. Description of the anticipated number, type, size, origin, routing and expected distribution of arrival and departure times of all vehicles accessing the facility site. If any of these factors are expected to vary significantly over the expected life of the facility, details of the expected variance shall be presented along with the anticipated peak traffic data;
  - b. Description of any changes in traffic volumes or patterns to or from any existing development on the site that may be altered as a result of construction of the facility;
  - c. Description of the roadway network adjacent to and surrounding the proposed facility, including number of lanes, turning lanes at intersections, traffic controls, and vehicle turning and classification counts at the site entrances and exits, all signalized intersections and significant unsignalized intersections along principal routes of access. The area of detailed study shall extend along principal routes of access until the site traffic represents an insignificant percentage of the overall traffic stream. Traffic counts shall be taken during the expected daily peak periods of operation of the proposed facility as well as the existing peak traffic periods on the surrounding roadways.
  - d. Descriptions of any traffic concerns identified by roadway jurisdictions within the area of detailed study;

- e. Operational capacity analysis during peak periods at principal intersections within the area of detailed study for a minimum of two scenarios: (1) existing traffic volumes, and (2) with the addition of site traffic. If projected traffic volumes are analyzed, the report shall include the basis for the projections and the analysis should consider both build and no-build scenarios;
  - f. Analysis of vehicle accidents at intersections within the area of detailed study;
  - g. Detailed analysis of anticipated traffic at the entrance(s) and exit(s) to and from the proposed facility, including either a traffic signal warrant analysis or gap study, and an intersection design study meeting the requirements of the agency having jurisdiction over the route providing access to the proposed facility. This information should include information on traffic for any pollution control facility and/or recycling facility located on, adjacent to or within 500 feet of the facility.
- (7) A written commitment (by host agreement or otherwise) to obtain certificates of insurance from companies having a Best rating of A VI or better that shall, at such time as the facility is permitted, cover accidents such as fires, explosions, nonsudden accidental occurrences and pollution impairment.
- (8) If the site is a proposed hazardous waste facility, a copy of the Resource Conservation and Recovery Act Contingency Plan.
- (9) A statement describing the past operating experience of the applicant, and any and all predecessor operators within the past five (5) years, and, if different, the operator of any solid waste or gas handling operations on any active unit or any proposed expansion of any active unit (and, for each, any subsidiary, member, manager or parent corporation) in the field of solid or hazardous waste management. Also include a statement describing the past operating experience of subsidiaries of the parent corporation operating or licensed in Illinois in the field of solid or hazardous waste management. For purposes of this paragraph, the term "active" means available to receive additional waste.
- (10) A statement setting forth a complete record of actual or alleged violations from the last ten years of the applicant, and any and all predecessor operators within the past five (5) years, and any proposed operator of any solid waste or gas handling operation on any active unit or any proposed expansion of any active unit (and any subsidiary, member, manager, parent corporation or subsidiary of the applicant or proposed operator) of any with environmental laws and regulations governing solid or hazardous management operations or activities. Said statement shall include, but not be limited to, a citation of the applicable statute or ordinance violated or alleged to be violated and a brief written summary of the activities or operations giving rise to the actual or alleged violations and the ultimate outcome of the matter, including whether any fines or penalties were imposed. For purposes of this paragraph, the term "active" means available to receive additional waste.

- (11) A description of the following (if applicable):
- a. Leachate collection system.
    1. Type, location and construction of the subsurface collection system;
    2. Written narrative describing methods and processes of the collection, management and treatment of the leachate;
    3. Program for monitoring effectiveness of the collection, management and treatment of the leachate; and
    4. Discharge points of effluent
  - b. Final cover system, including proposed soil and/or geomembrane specifications if applicable.
  - c. Facility construction quality assurance and quality control program;
  - d. Personnel requirements for facility operation and the training requirements for those personnel.
  - e. Gas collection system.
    1. Type, location and construction of the subsurface collection system;
    2. Written narrative describing methods and processes of the collection, management and utilization of the gas;
    3. Program for monitoring effectiveness of the collection, management and utilization of the gas; and
    4. Manner, method, and design of system to utilize the gas for energy.
- (12) The application fee for a request for siting approval is required and shall be administered as follows:
- a. The applicant shall deposit the sum of \$250,000.00 in the form of a certified or cashier's check, to cover the costs associated with the siting process, including (but not limited to) court reporter costs, transcript costs, city legal and consultant costs, and other expenses incurred by the city in conducting the review of the request for siting approval, the subsequent public hearing and the siting approval decision; provided, however, that any portion of the application fee that remains unexpended at the conclusion of the siting approval decision shall be returned to the applicant. An accounting of expenses attributed to the hearing process shall be provided monthly.
  - b. In the event that, at any time prior to the conclusion of the siting approval process, the city has expended such sums as to reduce the balance of the application fee to a figure less than \$50,000.00, the applicant will be notified in writing. The applicant would then have 14 days to deposit with the city clerk an additional \$50,000.00 in the form of a certified or cashier's check, unless the director determines, in his/her sole discretion, that additional funds in excess of \$50,000.00 are necessary based upon the status of the siting process, in which case the applicant shall deposit that amount. In no event shall any demand for additional fees exceed \$100,000.00 per each

additional funding request. Any portion of the fees, including any additional fees, that remain unexpended at the conclusion of the siting approval decision shall be returned to the applicant.

- (13) A table of contents shall be provided that readily identifies all sections and subparts of the application, including all accompanying appendices, exhibits, tables, and illustrations. The pages, appendices, exhibits, tables, and illustrations shall be denoted in logical sequence by bates stamp or as set forth by a numerical table of contents.
- (14) The applicant shall also produce a copy of the entire application in .pdf or other searchable electronic format such that the application may be uploaded to the city website and that read-only copies of the application may be provided to members of the public that request same.
- (d) An application may not be filed that is substantially the same as an application that was disapproved within the preceding two years pursuant to a finding under any of the criteria of subsection 31-8(b) of this chapter.
- (e) Although date stamped at the time of delivery, the application shall be subject to further review to assure compliance with the requirements of this chapter concerning the content of the application. Following receipt of the application, the city clerk shall cause the publication of a black border notice stating that said application and supporting evidence have been filed and are available in the city clerk's office for public inspection. The city clerk shall cause such notice to be published no later than 30 days from the date of filing.
- (f) In order to give members of the public an opportunity to make informed written comment and to give members of the public and the city an opportunity to prepare adequately and fairly for the public hearing hereinafter described, the applicant must fully comply with all requirements of this section of this chapter and failure to submit the required information as of the date of filing shall, absent good cause shown in the judgment of the hearing officer, render such information inadmissible at the public hearing.
- (g) At any time prior to the completion by the applicant of the presentation of the applicant's factual evidence and opportunity for cross-examination by the city council and any participants, the applicant may file not more than one amended application containing substantive amendments or revisions upon payment of additional fees in the sum of \$25,000.00—unless the director determines, in his/her sole discretion, that funds in excess of the \$25,000.00 are required due to the nature of the changes of the amended application, in which case that greater amount shall be the sum due. Upon the filing of an amended application, the time limitations for final action by the city council shall be extended for an additional period of 90 days.
- (h) Other amendments may be made if, in the opinion of the hearing officer, any such proposed amendment is nonsubstantive and the hearing officer otherwise allows such amendments.

Section 3. The Zion Municipal Code is hereby amended by amending Chapter 31, Section 31-6 as follows (additions underlined):

Sec. 31-6. - Public hearing.

- (a) The public hearing shall be held no sooner than 90 days from the date of filing and shall not commence any later than 120 days from the date of filing. The public hearing shall be at such times and places as is convenient for the public generally but shall be conducted so as to comply with the statutory requirement that the city render a decision prior to the 180th day from the date of filing, and accounting for the 30-day period for written comment following the close of the public hearing, with due time for the corporate authorities to deliberate and render a decision. The director shall determine the date(s), time(s) and location(s) for the public hearing as soon as is practical but in no event later than 30 days after the date of filing. In the event the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or a part of the city's jurisdiction is covered by the disaster area, the city may hold a component of the public hearing virtually in accordance with Section 7(e) of the Open Meetings Act and to the extent allowed by the rules adopted by the public body for the holding of public meetings. The rules must conform to the requirements and restrictions of the Open Meetings Act. At all times there will be a physical component of the public hearing in accordance with the residual terms of this Section 31-6. The rules, in accordance with law, may further limit the extent to which attendance by other means is allowed and may provide for the giving of additional notice to the public or any other actions that may further facilitate public access to the public hearing.
- (b) Once determined by the director, the director shall notify the applicant of the date, time and location of the public hearing and shall request that the applicant cause notice of the public hearing to be made as follows:
- (1) Publish two legal notices in a newspaper of general circulation published in the city or Lake County. The first such notice shall be published no sooner than 50 days from the date of filing and no later than 60 days from the date of filing; the second such notice shall be published no sooner than 65 days from the date of filing nor later than 75 days from the date of filing. Said notices, which may be in lower case, shall consist of the following:
- a. The name and address of the applicant;
  - b. The owners of the site and, if ownership is in a land trust, the names of the beneficiaries of said trust;
  - c. Legal descriptions of the property and the facility boundary, with each depicted on a plat of survey;
  - d. The street address of the property and, if there is no street address for the property, a description of the site with reference to location, ownership or



occupancy or in some other manner that will reasonably identify the property to the residents of the neighborhood;

- e. The nature and size of the proposed facility;
- f. The date of filing and the time and date of the public hearing;
- g. The location of the public hearing and any virtual platform thereon;
- h. A statement that the application with all required information is available in electronic format from the city clerk's office and further that all witness lists and copies of reports and other evidence must, absent good cause, be filed with the city clerk and all counsel of record no later than the 80th day from the date of filing.

(2) Certified mail to all members of the Illinois General Assembly from the district in which the proposed site is located.

(3) Certified mail to the Illinois Environmental Protection Agency.

(4) Certified mail to the County of Lake and all municipalities or townships within one and one-half miles of the proposed facility.

(5) Public hearing notice in a newspaper of general circulation in Lake County published as a display at least once during the week preceding the public hearing. Such notice shall consist of all items described in subsection (b)(1) above except for item (b)(1)c.

(c) Hearing procedures:

(1) The mayor shall appoint a hearing officer to preside over the public hearing and the hearing officer shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted, subject to this chapter. The hearing officer shall make all decisions and rulings in accordance with fundamental fairness. The hearing officer may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or other evidence. All testimony and all public meetings concerning the petition shall be in the presence of a certified court reporter who shall report all proceedings regarding consideration of the petition. The hearing officer shall have the following powers or duties:

- a. Administer oaths and affirmations;
- b. Conduct a public meeting, prior to the start of the public hearings, to explain the public hearing procedure and site location review process.
- c. Arrange for the presence of a certified court reporter to attend and transcribe the conduct of all public hearings for the public record.
- d. Regulate the course of the hearing, including, but not limited to, controlling the order of proceedings, consistent with this chapter, and to grant recesses for good cause shown. For example, good cause may be found when issues, facts, data or other pieces of evidence arise in the course of the hearing that were not reasonably foreseeable to the party requesting the

recess. No recess may extend past five days except due to the availability of a suitable forum for the hearing.

- e. Require a witness or person presenting unsworn public comment to state his/her position either for, against, or undecided with respect to the proposed facility.
- f. Examine a witness and direct a witness to testify.
- g. Establish reasonable limits on the duration of public hearing consistent with the Act and this chapter, including but not limited to the reasonable limitation of sworn testimony, unsworn oral comment, direct and cross-examination of any witnesses, and the limitation of repetitive or cumulative testimony and questioning.
- h. Rule upon objections and evidentiary questions, with the understanding that such rulings must be consistent with fundamental fairness, but need not be in strict compliance with the Illinois Supreme Court, Illinois Code of Civil Procedure, or any local rules of evidence governing a civil judicial trial in the State of Illinois.
- i. Allow the introduction of late-filed evidence, be it written or testimonial, on behalf of any participant, provided good cause is shown for the late-filing, the evidence is offered in and is relevant to the rebuttal portion of the applicant's or participant's case, and evidence was filed with the city clerk at least one day before the public hearing at which it is offered, and fundamental fairness to all parties will be preserved.
- j. The hearing officer shall be an attorney, licensed to practice in Illinois. The hearing officer shall confer with the city council concerning the petition, between the date of filing of the petition and the council's decision on the petition. Given the hearing officer's role of communicating with the city council, the hearing officer may not confer with the participants (members of the public, applicant and city included) concerning the petition, unless such conference takes place during the public hearing, is through correspondence which is filed with the city clerk (and, thus, available for everyone to view), or concerns location, time or other similar scheduling aspects of the public meeting or public hearing, or the notices for same. The only additional exception from this restriction is that the hearing officer may confer with the city clerk about the upkeep or status of the public record, make a request to review or copy the public record, or confer with the city clerk regarding the scheduling or location of the public meeting or hearing, or arrangements for the notices of the public meeting and hearing.
- k. At the conclusion of the public hearing and after consideration of all timely-filed written comments, the hearing officer shall submit draft written findings (of law or fact) to the city council and file a copy of such findings with the city clerk.
- l. The hearing officer does not have the right or the power to vote, as a city council member votes, on the petition.

- (2) Conduct of the public hearing shall be substantially as follows:
- a. Call to order;
  - b. Introduction of the city council members who are present together with the city attorney who is acting as counsel for the corporate authorities;
  - c. Introduction of the hearing officer;
  - d. Recognition of the applicant and identification of the petition;
  - e. Recognition of fees, notices, and date of filing of the petition;
  - f. Recognition of the city staff and special counsel that are present;
  - g. Recognition of all other participants who have filed the notice of participation;
  - h. Recognition of all reports, exhibits, maps or documents of record;
  - i. Applicant, participants represented by counsel, and special counsel for the city staff may then make an opening statement.
  - j. The city council shall then hear testimony from the applicant and/or any witnesses the applicant may wish to call. Upon the close of the applicant's testimony, Participants represented by counsel may present sworn testimony, including any witnesses and evidence they wish to present. Upon the close of all such testimony, the city may present sworn testimony, including witnesses and evidence it may wish to present. The hearing officer, in the exercise of his or her discretion, may then permit rebuttal testimony and sur-rebuttal testimony.
  - k. All witnesses shall testify under oath and be subject to reasonable questioning as follows: direct examination by counsel; cross-examination by counsel for other participants or the city staff, the city council and/or the hearing officer (including the use of written questions submitted by the public to the hearing officer); redirect examination; re-cross examination.
  - l. Following the testimony outlined in subparagraph (j) above, any participant not represented by counsel that wishes to provide sworn testimony subject to cross-examination by others may proceed.
  - m. Following the testimony, if any, outlined in subparagraph (l) above, any participant that has not otherwise presented testimony may provide unsworn testimony or comment, subject to the hearing officer's judgment concerning content and duration and consistent with fundamental fairness.
  - n. Closing statements, if any, by counsel for the applicant, participants represented by counsel, and counsel for the city staff.
  - o. Rebuttal statement, if any, by the applicant, subject to limitations as imposed by the hearing officer.
  - p. Hearing declared closed.
- (3) Public comment: written and oral:

- a. Any person has the right to file written comment concerning the appropriateness of the proposed facility, or its compliance with the requirements of Section 39.2 of the Act, with the city clerk, at any time after the filing of a petition and within the time limitation provided in subsection (d), below. Likewise, the applicant, city staff, the city attorney and/or any participant may file draft proposed findings of fact within the same time limitation.
  - b. The city clerk, on behalf of the city council, shall receive written comment or draft findings of fact and the clerk shall date stamp same, shall serve copies of the same on counsel for the applicant and counsel for the city, city staff and counsel of record for all participants; and shall file written comment and the postmarked envelope in which comment is received.
  - c. Copies of such written comments shall be made available for public inspection in the offices of the city clerk, and members of the public shall be allowed to obtain a copy of any written comment upon payment of actual cost of reproduction.
  - d. Any written comment received by the city clerk or postmarked not later than 30 days after the date of the last public hearing shall be made part of the record at the public hearing as hereinafter described and the city council shall consider any such timely written comments in making its final determination concerning said petition. In the event that the thirtieth day falls on a Sunday or a federal holiday, the next day on which mail is delivered shall be considered the thirtieth day for purposes of this subsection.
  - e. Any person has the right to provide oral, unsworn comment during the course of the public hearing, upon reasonable notice to the hearing officer that the person desires to provide such comment and consistent with the hearing officer's judgment concerning the conduct of the hearing. All oral testimony may be submitted in written form if the hearing officer so directs. This type of comment, since it is not provided under oath, is not subject to cross-examination.
- (4) Ex-parte communication prohibited. In recognition of the quasi-judicial role of the mayor and each member of the city council, and the city attorney, ex-parte communications with persons other than the mayor, council members or the city attorney concerning the application are prohibited between the date of filing and the date of the final decision of the city council (or the 180th day after the date of filing).

Section 4. Severability. In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such

finding shall not affect the validity of the remaining provisions of this Ordinance and the application thereof to the greatest extent permitted by law.

Section 5. Repeal and Savings Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the City of Zion prior to the effective date of this Ordinance.

Section 6. Effectiveness. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law, and the provisions of the Zion Municipal Code amended herein shall be preprinted with the changes.

SO ORDAINED this 29th day of September, 2021, at Zion, Lake County, Illinois.

AYES: Comms. Holmes, Frierson, Mayor Pro-Tem Fischer  
NAYS: None  
ABSENT: Commissioner McDowell, Mayor McKinney  
ABSTAIN: None

City of Zion

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Billy McKinney, Mayor

Attest

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Sheryl Spooner, City Clerk