



# CITY OF PELLA

## CITY COUNCIL OFFICIAL MINUTES

May 23, 2018

### A. CALL TO ORDER BY MAYOR AND ROLL CALL

The City Council of the City of Pella, Iowa, met in special session at the City Hall Conference Room at noon, Mayor Pro Tem Mark De Jong presiding. Council members present were: Mark De Jong, Tony Bokhoven, Lynn Branderhorst, Harold Van Stryland, Bruce Schiebout, Larry Peterson. Absent: Mayor James Mueller. City Administrator Mike Nardini and City Clerk Mandy Smith were present. No staff members or members of the general public signed the register.

### B. MAYOR'S COMMENTS

1. Approval of tentative agenda. Bokhoven moved to approve the tentative agenda, seconded by Van Stryland. On roll call the vote was: AYES: Bokhoven, Van Stryland, Schiebout, Peterson, De Jong, Branderhorst. NAYS: None. Motion carried.

### \*PUBLIC FORUM (for anyone wishing to address Council regarding agenda items)

No comments were received.

### C. ORDINANCES

1. Ordinance No. 931 entitled, "AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF PELLA BY AMENDING THE ZONING ORDINANCE, 165.11 CLASSIFICATION OF USES AND TABLE 165.12-2 PERMITTED USES BY ZONING DISTRICTS BY ADDING PROVISIONS DEFINING BREWPUB AS A USE AND PERMITTING BREWPUBS IN THE CBD CENTRAL BUSINESS DISTRICT AND CC COMMUNITY COMMERCIAL ZONING DISTRICTS." This ordinance was tabled at the February 6, 2018 Council meeting, and due to a lack of motion, it remained tabled.

BACKGROUND: This proposed ordinance was tabled at the February 6, 2018 Council meeting. The reason the ordinance was tabled was because Council is also considering amending the zoning code for a 'microbrewery' use, which is similar in many aspects to this proposed ordinance. The Planning and Zoning Commission will likely make a recommendation on the microbrewery zoning amendment late spring/early summer of this year. As a result, staff is recommending this proposed ordinance continues to be tabled until Council can consider microbrewery recommendation from the Planning and Zoning Commission.

Listed below is background information on this proposed ordinance, which is intended to amend the City's zoning code by creating a definition for *Brewpub* as a use type under the City's zoning code. In addition, the proposed ordinance would permit *Brewpubs* to operate in the Central Business District (CBD) and Community Commercial (CC) zoning districts by obtaining a special use permit.

Listed below is the zoning definition of *Brewpub*.

***Brewpub:*** A restaurant which includes the brewing of beer as an accessory use. The brewing operation processes water, malt, hops, and yeast into beer or ale. By definition, said establishments produce no more than ten thousand (10,000) barrels of beer or ale annually. The area, by definition, used for brewing, including bottling and kegging, shall not exceed twenty-five percent (25%) of the total floor area of the commercial space.

As background on this request, at the October 17, 2017, Policy and Planning session, the City Council heard a request from the Pella Area Community & Economic (PACE) Alliance regarding a desire to allow permitting of brewpubs under the City's zoning code. Following the discussion, Council directed the Planning and Zoning Commission to review allowing brewpubs in the CC and CBD zoning districts subject to obtaining a special use permit from the Board of Adjustment. Please note, the Planning and Zoning Commission held a work session on this item at their December 18, 2017 meeting.

Special Use Permit

If the proposed text amendment is approved, brewpubs would be able to operate in the CC and CBD zoning districts subject to obtaining a special use permit. The special use permit would allow the Board of Adjustment to evaluate the request for public safety concerns including dust/pest control, odor, traffic impact, and necessary infrastructure. In addition, all buildings in our community are regulated under the State Fire Code which permits the City to perform fire inspections to ensure compliance with the State of Iowa Fire Code for flammable liquids, ventilation, and spill control.

As mentioned above, the Board of Adjustment has the authority to approve special use permits. Prior to approval, the Board of Adjustment is required to hold a public hearing and notify neighboring property owners of the application. This process provides a forum for any adjacent property owners who may have concerns with the proposed business. Furthermore, the Board of Adjustment has wide authority in granting special use permits including, but not limited to, any use or operating hour restrictions.

Recommendation

Staff is recommending this ordinance continue to be tabled until Council can consider the Planning and Zoning Commission's microbrewery recommendation.

ATTACHMENTS: Ordinance, Written Comment  
REPORT PREPARED BY: Planning and Zoning Department  
REVIEWED BY: CITY ADMINISTRATOR  
CITY CLERK

RECOMMENDATION: Continue to table ordinance

2. Ordinance No. 940 entitled, “AN ORDINANCE AMENDING THE PELLA ZONING ORDINANCE BY ADOPTING A NEW SECTION 165.12(15) RELATING TO THE SALE OF CONSUMER FIREWORKS.” Schiebout moved to place ordinance no. 940 on its third reading, seconded by Bokhoven. On roll call the vote was: AYES: Schiebout, Bokhoven, Branderhorst, Van Stryland, Peterson, De Jong. NAYS: None. Motion carried. Bokhoven moved that ordinance no. 940 be adopted, seconded by Schiebout. On roll call the vote was: AYES: Bokhoven, Schiebout, Peterson, De Jong, Branderhorst, Van Stryland. NAYS: None. Mayor Pro Tem De Jong declared the motion carried and the ordinance duly passed and adopted.

BACKGROUND: This ordinance defines the retail sale of fireworks as a use type under the City of Pella’s zoning code and authorizes these sales to occur in industrial zoned districts. As background, in the spring of 2017, the State of Iowa passed legislation to allow the sale and use of consumer fireworks within the state associated with the New Year’s Day and Fourth of July holidays, starting in the summer of 2017.

Under the state statute, fireworks retailers must obtain a license from the state fire marshal. As part of that process, they are required to submit a site plan for each proposed sales location, including any buildings or structures to be occupied, and demonstrate that they have complied with NFPA 1124. NFPA 1124 is a national code that regulates the manufacture, transportation, and storage of fireworks and pyrotechnic articles. However, site plan review is not required for sales involving less than 500 lbs. of fireworks.

Since the sale and use of fireworks was prohibited under city code in 2017, fireworks sales were regulated through the City’s temporary sales or peddler permit process. The City of Pella’s zoning code defines a peddler as follows:

*“Peddler” means any person who travels within the City or has a temporary location in the City for the conduct of his or her business and who has no permanent place of business in the City, but offers or exposes for sale goods, wares or merchandise, or who makes sales and delivers articles to purchasers.*

According to city code, peddlers can operate in the City’s commercial zoning districts. However, before commencing operations, peddlers are required to obtain both a peddler’s permit through the City Clerk’s office and a design permit through the Community Development Committee. One of the main requirements of a peddler’s permit is conducting a criminal background check on any person selling merchandise. In addition, this process also provides the City with knowledge on what is being sold in our community. Likewise, the City of Pella’s design permit process is intended to ensure any cart or structure used for the temporary sales ‘blends in’ or does not seem out of place with the architectural requirements for the community’s commercial corridors. Furthermore, under the city code, peddlers are also required to obtain a sign permit for any signage displayed.

In 2017, several issues arose with permitting fireworks sales through the City’s peddler’s permit process. From staff’s perspective, most of these issues were attributed to the short notice period involved for the permitting of fireworks sales in the summer of 2017. As a result, there was confusion among potential fireworks vendors regarding the City of Pella’s requirements for fireworks sales.

Listed below are the main issues associated with fireworks sales in 2017:

- Multiple instances of both on-site and off-premise signage violations by fireworks vendors.
- One temporary fireworks vendor began selling fireworks without receiving a peddler’s permit from our City Clerk’s office.
- The City of Pella’s Police Department expressed concerns on addressing peddler’s permit violations for fireworks sales in the City of Pella’s two-mile jurisdiction.
- One proposed fireworks vendor constructed their sales tent partially in the City of Pella’s public right-of-way and in close proximity to a street intersection.
- The City of Pella’s Public Works Department expressed concerns about fireworks tents being located in the sight visibility triangle of respective intersections. Temporary structures being located in the sight visibility triangle is a public safety concern. In addition, the geographical area for a sight visibility triangle could potentially extend past the public right-of-way.
- The City of Pella’s Planning and Zoning Department expressed concerns about existing businesses meeting off-street parking requirements and complying with the City’s sign code while at the same time locating temporary fireworks tents on their property.
- The City of Pella’s Community Development Committee (CDC) expressed concerns on the design standards for temporary fireworks tents. Specifically, the CDC felt if the City continued to permit temporary fireworks sales in commercial corridors, the City’s design guidelines would need to be further developed for large fireworks tents. The reason the CDC felt this was important was due to the potential of having multiple fireworks tents located within the City’s commercial corridors.

After reviewing the above concerns, the City Attorney and staff are recommending regulating fireworks sales through the City’s zoning ordinance rather than through the peddler’s permit process. As a result, the City Attorney has recommended defining retail sales of fireworks as a use under the zoning code and permitting it by right in certain zoning districts. Listed below is a summary of the proposed ordinance.

#### **Proposed Zoning Use Definition**

The proposed ordinance defines consumer fireworks as identified under state code. The reason this is being proposed is to align with the State of Iowa in defining fireworks. Secondly, staff believes it is very important to provide clarity to potential fireworks vendors on which explosives are considered allowable for retail sales. For Council’s review, staff has attached the state code which identifies which explosives are considered consumer fireworks.

#### **Proposed Zoning Districts for Fireworks Sales**

The proposed ordinance limits the sales of consumer fireworks to industrial (M1 – Limited Light Industrial and M2 – Heavy Industrial) zoning districts within the zoning jurisdictions regulated by the City of Pella. The reason industrial zoning districts are being recommended is because of the available public infrastructure in the event of a fire from a temporary structure. Secondly, there are no design permit requirements for industrial zoned sites, which simplifies procedures for temporary fireworks tents.

It is important to note, this proposed ordinance also requires the sales of fireworks to be the primary use for the property in which fireworks sales take place. This requirement is intended to address concerns related to fireworks sales co-locating on actively occupied industrial sites. Specifically, there have been concerns related to off-street parking requirements for existing businesses as well as on-site signage.

Pursuant to the 28E Agreement between the City of Pella and Marion County relating to planning and zoning authority and the Pella zoning ordinance, these zoning regulations will extend beyond the City’s boundaries and will be applicable within portions of the City’s two-mile zoning jurisdiction. For Marion County, the areas subject to this proposed ordinance are identified as ‘Subarea A’. For Mahaska County, the ordinance would apply to all areas within the City’s two-mile jurisdiction. Staff has enclosed a map of the two-mile zoning jurisdiction for Council’s review.

#### **City Site Plan Requirements**

Previously, the Planning and Zoning Commission had inquired if temporary fireworks tents would be subject to the City’s site plan requirements. According to legal counsel, temporary fireworks tents would be subject to the City’s site plan requirements if the tent exceeds 2,000 square feet.

#### **Recommendation**

Staff is recommending approval of the proposed ordinance which would limit fireworks sales to industrial areas under the City’s zoning jurisdiction and require the sales of fireworks to be the primary use for the property in which fireworks sales take place. It is important to note, the Planning and Zoning Commission is scheduled to review this proposed ordinance during their meeting on May 14, 2018.

ATTACHMENTS: Ordinance, State Code Section 100.19, Zoning District Map, Two-mile Jurisdiction Map, Public Comment  
REPORT PREPARED BY: City Administration  
REVIEWED BY: CITY ADMINISTRATOR  
CITY CLERK  
RECOMMENDATION: Approve ordinance

3. Ordinance No. 941 entitled, "AN ORDINANCE REPEALING SECTION 41.12 OF THE PELLA CITY CODE AND ADOPTING A NEW SECTION 41.12 RELATING TO FIREWORKS." Schiebout moved to place ordinance no. 941 on its third reading, seconded by Van Stryland. On roll call the vote was: AYES: Schiebout, Van Stryland, Peterson, De Jong, Bokhoven, Branderhorst. NAYS: None. Motion carried. Peterson moved that ordinance no. 941 be adopted, seconded by Bokhoven. On roll call the vote was: AYES: Peterson, Bokhoven, Branderhorst, Van Stryland, Schiebout, De Jong. NAYS: None. Mayor Pro Tem De Jong declared the motion carried and the ordinance duly passed and adopted.

BACKGROUND: This ordinance updates section 41.12 of the city code relating to the use of fireworks. As background, in 2017 the State of Iowa passed legislation to allow the use and sale of consumer fireworks generally associated with the timeframes surrounding the Fourth of July and New Year's Day holidays. It is important to note, communities could still prohibit the use of fireworks through passage of an ordinance or resolution. After reviewing the new state law, both the Pella Police and Fire Departments recommended that the City continue to prohibit the use of consumer fireworks due to the potential increased risks of personal injuries and structure fires. As a result, the Pella City Council passed a resolution in June of 2017 prohibiting the use of consumer fireworks in our community.

This ordinance updates section 41.12 of the city code to do the following:

- Define consumer fireworks as identified under state code.
- State that the use of consumer fireworks continues to be prohibited within City limits.
- State that any violation of this code section would be subject to a \$250 fine.
- State that the City Council has the ability to issue special event permits for display fireworks such as the Fourth of July community firework display.

In summary, staff is recommending approval of this ordinance which prohibits the use of consumer fireworks within our community.

ATTACHMENTS: Ordinance  
REPORT PREPARED BY: City Administration  
REVIEWED BY: CITY ADMINISTRATOR  
CITY CLERK  
RECOMMENDATION: Approve ordinance

#### **D. OTHER BUSINESS / \*PUBLIC FORUM (any additional comments from the public)**

Comments were received and addressed.

#### **E. ADJOURNMENT**

There being no further business claiming their attention, Bokhoven moved to adjourn, seconded by Van Stryland. On roll call the vote was: AYES: Bokhoven, Van Stryland, Schiebout, Peterson, De Jong, Branderhorst. NAYS: None. Motion carried. Meeting adjourned at 12:11 p.m.