

Council Bill/General Ordinance No. 3002-2023

Sponsor: _____

AN ORDINANCE

AMENDING Chapter 15, "GARBAGE AND TRASH," of the Moline Code of Ordinances, by enacting one new Article V, "POLLUTION CONTROL FACILITY SITING."

WHEREAS, §39.2 of the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.) gives the governing body of a City the responsibility of approving or disapproving all requests for local siting approval for each pollution control facility within the corporate boundaries of the City; and

WHEREAS, pursuant to the Act, developers of new pollution control facilities or owners of existing facilities that wish to expand their operation that are located in the City are required to file a site approval request with the City Council; and

WHEREAS, the City Council is obligated to conduct a public hearing on such a request which shall include the opportunity for meaningful public comment on the proposed facility; and

WHEREAS, it is in the best interest of the City to establish a uniform procedure to govern the new pollution control facility siting process within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOLINE, ILLINOIS, as follows:

Section 1 – That Chapter 15, "GARBAGE AND TRASH," of the Moline Code of Ordinances, is hereby amended by enacting one new Article V, "POLLUTION CONTROL FACILITY SITING," which shall read as follows:

"ARTICLE V. POLLUTION CONTROL FACILITY SITING

SEC. 15-5100. DEFINITIONS.

(1) "Act" is the Illinois Environmental Protection Act as now enacted or as hereafter amended (415 ILCS 5/1, et seq.).

(2) "Applicant" is any person, firm, partnership, association, corporation, company or organization of any kind submitting an application for site approval pursuant to §39.2 of the Act or pursuant to this Ordinance.

(3) "City" is the City of Moline, Illinois.

- (4) "City Clerk" is the City Clerk of the City.
- (5) "City Council" is the City Council of the City.
- (6) "IEPA" or "Agency" is the Illinois Environmental Protection Agency.

(7) "Hearing Officer" is a person recommended by the Mayor and appointed by the City Council to conduct a Public Hearing and make Findings of Fact, Conclusions of Law, and recommendations to the City Council as provided in this Ordinance.

(8) "Pollution Control Facility" or "Facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, or a waste treatment facility, but in no event will a Pollution Control Facility include any type of hazardous waste facility or waste incinerator facility.

In addition, all other words used in this ordinance and defined in the Act shall have the same definitions and meanings as found in said Act.

SEC. 15-5101. CITY APPROVAL OF POLLUTION CONTROL FACILITIES.

No site approval for the development or construction of a new Pollution Control Facility or expansion of an existing Pollution Control Facility in the City may be granted by the City Council unless an application is filed for approval of such a site and is submitted for consideration to the City Council pursuant to this ordinance.

In no event, will the City accept applications for any type of hazardous waste facility or waste incinerator facility.

SEC. 15-5102. NOTICE OF INTENT TO FILE APPLICATION FOR SITE LOCATION APPROVAL.

No later than 14 days prior to a request for location approval, the Applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the Applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County; provided, that the number of feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250-foot requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed Facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the Applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided.

SEC. 15-5103. PROCEDURE FOR FILING AN APPLICATION FOR APPROVAL OF A POLLUTION CONTROL FACILITY.

In order to request siting approval for a new Pollution Control Facility as defined by the Act in the City an Applicant must file an application with the City Clerk with a minimum of 5 paper copies of the application and 15 complete copies of the application in digital pdf format. The applicant must supply such additional copies as the City may reasonably request. In addition, Applicant shall provide the local public Library with not less than one complete electronic copy of the application in order for the Library to make available for public inspection at the Library, should the Library so desire.

SEC. 15-5104. FILING FEE.

The Applicant shall deposit with the City Clerk at the time of filing the application for site approval of a new Pollution Control Facility as defined by the Act or expansion of an existing Pollution Control Facility, a filing fee deposit of \$75,000 for a solid waste transfer station, a filing fee deposit of \$150,000 for a Pollution Control Facility. If the Applicant elects to file an amended application for site location approval for any new Pollution Control Facility as defined by the Act in accordance with this ordinance, such amended application shall be accompanied by payment of a supplemental filing fee of 25% of the initial filing fee.

The applicable fee shall be used by the City for and is intended to defray the reasonable and necessary costs of preparing to process and processing the application (hereinafter collectively referred to as "City costs") including, but not limited to, costs of site inspection, clerical expenses, copying costs, Hearing Officer compensation, court reporter expenses, transcript costs, public notice expenses, professional consultants' fees (i.e. qualified professional engineers, planners, appraisers, etc.) tests, exhibits and testimony, if any, and any other relevant costs incident to the consideration of an application, and all expenses incurred leading up to that consideration not previously reimbursed, preparing the record on appeal. Costs and expenses incurred by the City in defending an Applicant's appeal of the denial of a siting application are specifically exempted from reimbursement.

Should the City incur any additional costs in excess of the applicable filing fee deposit, the Applicant shall bear any and all such additional costs and shall promptly pay over such additional amount to the City upon request or demand. In the event that, at any time prior to final approval or the completion of any appeal, the balance of the initial filing fee deposit shall be reduced to an amount less than Ten Thousand Dollars (\$10,000), the Applicant shall deposit an additional amount of 25% of the initial filing fee with the City within five (5) days after being notified in writing of the need for such additional amounts.

SEC. 15-5105. CONTENT OF APPLICATION.

The application shall contain at least the following information:

(a) The name and address of the Applicant, all direct and indirect owners of such Applicant holding more than a 10% interest, and the ownership interest held by such owners. The foregoing notwithstanding, this requirement does not require disclosure of limited partners, Trust beneficiaries, or minority shareholders of publicly traded companies.

(b) The name and address of the owners of the site on which the Facility is proposed to be located, all direct and indirect owners of such site holding more than a 10% interest, and the ownership interest held by such owners. The foregoing notwithstanding, this requirement does not require disclosure of limited partners, Trust beneficiaries, or minority shareholders of publicly traded companies.

(c) The legal description of the proposed site and a street address or some other reasonable description of where the proposed site is located.

(d) A description of the proposed Facility, its operation and the expected longevity thereof.

(e) A copy of the pre-filing notice required in 415 ILCS 5/39.2(b).

(f) The area to be served by the proposed Facility and a statement of the need for such Facility at that location.

(g) For a Pollution Control Facility, a list of the existing and proposed Pollution Control Facilities located within or serving or reasonably capable of serving the area proposed to be served and with respect to such Facilities, the following information shall be provided: location, size, owner and/or operator, type of Pollution Control Facility, remaining capacity, probable life of the proposed Facility and types of waste received.

(h) The expected types, amounts and methods of treatment, transportation or storage of all waste proposed for the site and the origin of those wastes.

(i) For a Pollution Control Facility, a description of the geologic and hydro-geologic character of the site including, but not limited to, soil boring samples obtained, groundwater flow data, identification of the uppermost aquifer, and groundwater monitoring plans.

(j) A site plan showing details of the proposed Facility including, but not limited to:

(1) Cross sections for a Pollution Control Facility.

(2) All existing wells within 1,320 feet of the footprint of the site for a Pollution Control Facility.

- (3) Roads, entrances and driveways.
- (4) Soil boring sample locations on or within 200 feet of the site for a Pollution Control Facility.
- (k) A detailed topographic survey of the subject site.
- (l) A map showing land uses within one and a half (1.5) miles of the site.
- (m) A map showing the boundary of any 100-year floodplain covering all or any part of the site.
- (n) All documents submitted as of the date of the application to the Agency pertaining to the proposed Facility, except trade secrets.
- (o) A statement of the plan of operation for the proposed Facility including, if applicable, but not limited to, the following:
 - (1) Method of landfilling, incineration, resource recovery or other process and/or loading and unloading of materials, as may be applicable.
 - (2) Hours of operation.
 - (3) Personnel.
 - (4) Methods for litter, dust, vector and odor control.
 - (5) Plans for surface drainage and erosion control.
 - (6) Methods for fire control.
 - (7) Action plans for collective actions for spills and other operational accidents.
 - (8) If applicable, the stages of development or use.
 - (9) An end use plan for waste disposal sites.
 - (10) Ground water monitoring, including well monitoring locations, and sampling and analysis protocol, if applicable.
 - (11) Surface water monitoring, including sampling locations, and sampling and analysis protocols, if applicable.
 - (12) If applicable, on-site gas control and monitoring protocol.

- (13) If applicable, leachate control and treatment.
- (14) If applicable, post-closure care and financial plan.
- (15) Identification of any on-site wetlands and the corresponding mitigation plan.
- (p) A statement or report of traffic information regarding the proposed site including the anticipated number of vehicles and their size, weight and direction of movement, and description of the proposed ingress and egress traffic routes to be used.
- (q) A statement of compliance with the County Solid Waste Management Plan, if any.
- (r) A statement describing the past operating experience of the Applicant (and any subsidiary, parent corporation or subsidiary of the parent corporation) in the field of solid waste management.
- (s) A statement citing the past record of all convictions or admissions of violations of the Applicant (and any of its subsidiaries) in the field of solid waste management. In the case of subsidiaries the statement shall be limited to convictions or admissions of violations occurring after the subsidiary was acquired. Said statement shall include but not be limited to a citation of the applicable statute or ordinance violated, a brief written summary of the violation or conviction and the penalty imposed.
- (t) All physical evidence (except oral testimony) including, but not limited to, studies, maps, reports, permits or exhibits which the Applicant desires the Hearing Officer to consider at the public hearing. It is intended that the Applicant provide a full and complete disclosure of its case to facilitate early review and analysis by all parties.
- (u) The pages of the application submitted to the City shall be numbered or otherwise identified for easy reference. If an application consists of more than one binder, the pages within each binder shall be numbered or otherwise identified, and each binder shall be separately identified by volume.

SEC. 15-5106. AMENDMENTS TO APPLICATION.

At any time prior to the completion by the Applicant of the presentation of the Applicant's factual evidence and an opportunity for cross-questioning by the City Council and any participants, the Applicant may file not more than one amended application which must be accompanied with the appropriate supplemental filing fee. Provided, however, that the time limitations for final action by the City Council on such amended application shall be extended for an additional period of 90 days.

Other amendments may be made with the consent of the City Council.

SEC. 15-5107. PUBLIC HEARING.

At least one public hearing shall be held no sooner than 90 days but no later than 120 days from receipt of the request for site approval. Not later than 14 days prior to said hearing, the Applicant shall publish notice in a newspaper of general circulation published in the county and provide notice by certified mail to the IEPA, all members of the General Assembly from the district in which a proposed site is located; to the governing authority of every municipality contiguous to the proposed site or contiguous to the City; and to the county board of the county where the proposed site is to be located. The notice shall contain the following information, which, except for items (h) through (m) must be included by the Applicant in its application. The Mayor shall notify the Applicant in writing of the date and location of the public hearing at least 45 days prior to such hearing.

- (a) The name(s) and address(es) of the person(s) requesting site location approval;
- (b) The owner(s) of the site, and in case ownership is in a land trust, the names of the beneficiaries of said trust;
- (c) The legal description of the site;
- (d) The street address of the property, and if there is no street address applicable to 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 residents of the neighborhood;
- (e) The nature and size of the proposed development;
- (f) The nature of the activity at the proposed site;
- (g) The probable and proposed (if different from probable) life of the proposed activity;
- (h) The time and date of the public hearing(s);
- (i) The location of the public hearing;
- (j) A statement that the application and public record is available to the public in the City Clerk's office;
- (k) A statement that all copies of evidence, except rebuttal evidence, other than testimony to be submitted at the public hearing must be filed in the City Clerk's office at least two (2) days before the first public hearing; provided, however, that the Hearing Officer, in his or her sole and absolute discretion, may allow for the admission of evidence

at the public hearing, or any continuation thereof, otherwise required to be filed with the City Clerk's office in accordance with this Section 15-5107(k);

(l) A statement that copies of the application and public record are available upon payment of the costs and fees requested by the City for such reproduction and which are not inconsistent with State law, at the City Clerk's office; and

(m) A statement that any person intending on participating in the public hearing process (through sworn testimony or unsworn oral comment) must file written notification of their intent to participate with the City Clerk at least ten (10) days prior to the public hearing.

SEC. 15-5108. APPOINTMENT AND CONDUCT OF THE HEARING OFFICER.

The Mayor shall recommend to the City Council and the City Council shall appoint a Hearing Officer for the public hearing. The Hearing Officer shall preside over the public hearing and shall make any decisions concerning the admission of evidence and the manner in which the hearing is conducted subject to this ordinance. 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. For good cause shown, the Hearing Officer may waive any requirement of this ordinance except financial requirements. No ruling of the Hearing Officer shall be appealable to the City Council.

SEC. 15-5109. PARTICIPANTS AT THE HEARING.

Any person, group or party who desires to participate in the public hearing (other than the Applicant and the City, through its representatives) shall file an appearance, which shall include the address of that party with the City Clerk at least ten days prior to the public hearing. Any party filing an appearance in accordance with this section shall be provided an opportunity to fully participate in the public hearing. Such participation shall include the opportunity to make statements, cross-examine the Applicant's witnesses, present evidence including, but not limited to, testimony of witnesses, and make arguments at the close of the hearing. Full participation as described in this section shall be in accordance with the rules of fundamental fairness and procedure, including time limitations, as applied by the Hearing Officer. The right to full participation under this section shall not be construed to permit unlimited general comment, or repetitive cross-examination. The rules of evidence shall not be strictly applied.

In addition to the filing of a written entry of appearance as specified above, any party wishing to fully participate in the public hearing shall submit a list of any witnesses it intends to call and the nature of the anticipated testimony of each such witness by no later than two days prior to the hearing. A party shall not be permitted to call any witness, except rebuttal witnesses, who have not been properly identified in accordance with this requirement.

Members of the City Council may appear at the hearing and may ask questions or otherwise participate, without regard to the written notification required above. The City Council may appear through its counsel.

SEC. 15-5110. WRITTEN COMMENT.

The City Clerk shall receive written comment from any person concerning the appropriateness of the proposed site. Any written comment received by the City Clerk either prior to commencement of the hearing or within 30 days after the date of the last public hearing shall be made part of the record, and the City Council shall consider any such timely written comments in making its final determination concerning said request.

SEC. 15-5111. GENERAL PUBLIC COMMENT AT THE HEARING.

Any person appearing at the public hearing and signing a register expressing a desire to address the Hearing Officer at the hearing shall have the right to make unsworn comment on the application. Opportunity for any person to make general comment pursuant to this section shall be limited to five minutes per person. The Hearing Officer in his discretion may permit others in attendance at the hearing to make comment or may expand an individual's time for comment if he deems it appropriate. Public comments shall not be given the evidentiary weight of sworn testimony subject to cross-examination.

SEC. 15-5112. CONDUCT OF THE HEARING.

Conduct of the public hearing shall be substantially as follows:

- (a) Call to order.
- (b) Introduction of the Hearing Officer.
- (c) Recognition of the Applicant and identification of the request for site approval.
- (d) Recognition of the fees, notices and date of filing the request for site approval.
- (e) Recognition of parties wishing to testify and any other reports, exhibits, maps or documents of record filed pursuant to this ordinance.
- (f) The Applicant, the City's representatives and other parties participating in the hearing pursuant to Section 15-5109 of this ordinance may make an opening statement.
- (g) The Hearing Officer shall then hear testimony from the Applicant and/or any witnesses the Applicant may wish to call. The City's representative and any other party

participating in the hearing pursuant to Section 15-5109 of this ordinance shall have the right to cross-examine each of the Applicant's witnesses.

(h) Upon the close of the Applicant's testimony, other parties participating in the hearing pursuant to Section 15-5109 of this ordinance may present evidence and call witnesses in support of their position. The Applicant and the City shall have the right to cross-examine any such witnesses.

(i) Upon the close of the Applicant's and other parties' testimony and evidence, members of the public of record may then present oral comment to the Hearing Officer. The Hearing Officer shall decide the order of presentation of testimony subject to this ordinance.

(j) Following close of the public comment portion of the hearing, the Applicant and other parties participating in the hearing pursuant to Section 15-5109 of this ordinance shall be permitted to make final summary statements subject to limitations as imposed by the hearing officer.

(k) Hearing closed.

SEC. 15-5113. COURT REPORTER.

The Applicant shall ensure that a court reporter shall be present at any public hearing for purposes of establishing a record and transcript of the proceeding.

The transcript of the public hearing shall be made available for public inspection at the office of the City Clerk. Interested persons may obtain copies of the transcription in accordance with the City's Freedom of Information policies.

SEC. 15-5114. HEARING OFFICER'S PROPOSED FINDINGS OF FACT.

(a) Any party participating pursuant to Section 15-5109 may file proposed findings of law and fact within 7 days of the close of the record. Within 15 days of the close of the record, the Hearing Officer shall provide the City and the Applicant with Proposed Findings of Fact. The Proposed Findings of Facts, which shall be publicly available, shall be based upon the record and the criteria the City is required to consider pursuant to the Act, as follows:

(1) The Facility is necessary to accommodate the waste needs of the area it is intended to serve;

(2) The Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(3) The Facility is located so as to minimize incompatibility with the character

of the surrounding area and to minimize the effect on the value of the surrounding property;

(4) For a Facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain or the site is flood-proofed;

(5) For a Facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the Facility is a facility described in subsection (b)(3) of Section 22.19a (415 ILCS 5/22.19a), the site is flood-proofed;

(6) The plan of operations for the Facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(7) The traffic patterns to or from the Facility are so designed as to minimize the impact on existing traffic flows;

(8) If the Facility is to be located in a county where the county board has adopted a solid waste management plan that is consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act [415 ILCS 10/1 et seq. or 415 ILCS 15/1 et seq.], the facility is consistent with the solid waste management plan of Marshall County; for purposes of this subsection, the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; and

(9) If the Facility will be located within a regulated recharge area, any applicable requirements specified by the board for such areas have been met.

(b) The Hearing Officer may also include in his proposed Findings of Fact, and the City Council may also consider, the previous operating experience and past record of convictions or admissions of violations of the Applicant (and subsidiary or parent corporation) in the field of solid waste management when considering above-referenced criteria (2) and (6).

SEC. 15-5115. DECISION OF THE CITY COUNCIL.

An Applicant for local siting approval shall submit sufficient testimony and evidence concerning the proposed Facility to demonstrate compliance with the following criteria, and local siting approval shall be granted only if the proposed Facility meets the following criteria:

(a) The Facility is necessary to accommodate the waste needs of the area it is intended to serve.

(b) The Facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected.

(c) The Facility is compliant with the zoning code of the City and is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

(d) For a Facility other than a sanitary landfill or waste disposal site, the Facility is located outside the boundary of the 100-year floodplain or the site is flood-proofed.

(e) For a Facility that is a sanitary landfill or waste disposal site, the Facility is located outside the boundary of the 100-year floodplain, or if the Facility is a facility described in subsection (b)(3) of Section 22.19a (415 ILCS 5/22.19a), the site is flood-proofed.

(f) The plan of operations for the Facility is designed to minimize the danger to the surrounding area from fires, spills or other operational accidents.

(g) The traffic patterns to or from the Facility are so designed as to minimize the impact on existing traffic flows.

(h) The Facility is consistent with the lawful provisions of a solid waste management plan adopted by Rock Island County in accordance with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act.

(i) If the Facility will be located within a regulated recharge area, any applicable requirements specified by the Pollution Control Board for such areas have been met.

The City Council may also consider as evidence the previous operating experience and past record of convictions or admissions of violations as authorized by the Act.

The decision of the City Council shall be in writing specifying the reasons for the decision. In granting approval for a site, the City Council may impose such conditions as may be reasonable and necessary to accomplish the purposes of this section and as are not inconsistent with regulations promulgated by the Pollution Control Board. The decision shall be available for public inspection at the office of the City Clerk and may be copied upon payment of the actual cost of reproduction. If there is no final action by the City Council within 180 days after the filing of the request for site approval, the Applicant may deem the request approved.”

Section 2 - Severability clause. That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 3 - That this ordinance shall be in full force and effect from and after passage, approval, and if required by law, publication in the manner provided for by law.

CITY OF MOLINE, ILLINOIS

DocuSigned by:
S. Rayapato

Mayor 7016AB8EFE254D4...

January 24, 2022

Date

Passed: January 24, 2022

Approved: February 7, 2022

Attest: *Jessica A. St. Pierre*

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City Clerk