



## Legislation Text

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File #: 22-085, Version: 2

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### **ACTION REQUESTED:**

Communication from the City Manager and Corporation Counsel with a Recommendation to WAIVE the City's RIGHT OF FIRST REFUSAL to Acquire the SPIRIT OF PEORIA, Due to the Lack of Financial and Business Information Concerning the Proposed Purchaser.

### **BACKGROUND:**

**March 9, 2022 Update:** *Staff inquired of Mr. Grieves about obtaining an appraisal and the maintenance logs of the Spirit. In his text message response he stated "The offer to the City was condition free, Buyer has accepted the vessel in its, "as is, where is" condition. Allowing the City to perform any survey or appraisal would violate my agreement with Yacht Starship."*

*City staff still lacks any financial basis to determine if the \$1 million purchase contract from Yacht Starship is "bonafide offer." Without additional information or the ability to appraise the boat, the city staff cannot recommend purchase of the Spirit of Peoria.*

On or about July 12, 1996, the City entered into a Riverboat Landing Redevelopment Agreement with G&G Packet Company. Article XXI of the Agreement states:

If Tenant desires to sell the Spirit and/or Katie Hooper or successor vessels approved by the City (the "Vessels") in accordance with a bona fide offer made to or by a third party ("Third Party Offer") and Tenant wishes to sell such Vessel(s) pursuant to such Third Party offer, Tenant shall first offer the Vessel(s) to Landlord on the same terms and conditions as the Third Party Offer. The terms and conditions of any Third Party offer shall be set forth in writing, and a copy of such Third Party offer shall promptly be provided by Tenant to Landlord, together ***with reasonable financial and business information concerning the proposed purchaser(s).*** Landlord shall then have ninety (90) days from the date it receives a copy of the Third Party offer (the "Right of First Refusal Exercise Period") in which to advise Tenant in writing whether it elects to purchase the Vessel (s) on the terms and conditions of such Third Party offer (a "Right of First Refusal Exercise Notice"). If landlord does not timely elect to purchase the Vessel(s) covered by the Third Party offer then the Vessels may be sold to the third party on the same terms of the Third Party offer for a period of thirty (30) days after the expiration of the Option Exercise Period, but if Tenant desires to sell the Vessel(s) for a lesser price, or on terms more favorable to the purchaser(s), or after the 30-day period, then a new written Third Party offer with such new terms shall be submitted to Landlord in the same manner and subject to Landlord's right of refusal for the same period as provided in this Article XXI.

It is agreed and understood that Tenant cannot sell, exchange or otherwise dispose of the Vessels without complying with the provisions of this Article XXI.

On June 1, 2004, the City Council voted 9-1 to authorize the City Manager to waive the City's Right of First Refusal to purchase the Katie Hooper. The Katie Hooper was then sold, without objection, to John A. Cunningham and William Hall for \$200,000. The remaining terms of the Agreement remained in effect. The Agreement expires April 30, 2022.

On February 1, 2022, (approximately 90 days before the termination of the Agreement) Captain Alex Grieves,

on behalf of G&G Packet Company forwarded correspondence to the City Manager, Mayor Ali and the City Council indicating that he had been approached by Yacht Starship Dining Cruises of Tampa, Florida for the purchase of the Spirit of Peoria. Grieves included a copy of the proposed Purchase and Sale Agreement. The Purchase and Sale Agreement was brokered by Pinnacle Marine Corporation and stated that Yacht Starship was purchasing the Spirit for \$1,000,000. Note that the sale was not subject to an appraisal and the Purchaser waived its right to a first marine survey in lieu of G&G warranting that the mechanical equipment was operational. Also of interest is that the owner of Yacht Starship is the registered business agent for Pinnacle Marine (headquartered in Wisconsin) in the State of Florida. As the City's rights under the First Rights of Refusal are no greater than the proposed Purchase Agreement, the City was left with no right to request an appraisal or a marine survey.

On February 8, 2022, the City responded to Captain Grieves asking for *reasonable financial and business information* concerning the proposed Purchaser, pursuant to Article XXI of its Agreement with G&G Packet Company. The legal department was able to independently verify that the down payment of \$300,000 was placed into escrow with Pinnacle Marine.

On February 9, 2022, G&G Packet Company provided confirmation of lease payments made to the City through 2000-2022. The lease payments were \$1 per year and were made on January 8, 2022. G&G Packet also provided ten years of tax information. G&G Packet Company did not provide any of the requested information under Article XXI regarding the Purchaser.

On February 15, 2022, the City responded to G&G Packet stating the language of Article XXI and renewing its request for the information the City was entitled to. On February 18, 2022, Legal Counsel had a phone conference with Alex Grieves where he inquired if the City would waive its rights to information if the Purchaser placed the remaining \$700,000 in escrow. Legal Counsel was provided with a letter from Trust Bank in Tampa Florida indicating that the Purchaser had the funds necessary to facilitate the Spirit of Peoria, which had an outstanding balance of \$700,000. On February 23, 2022, Legal Counsel informed Mr. Grieves that the City was not willing to waive its rights to the financial information that allowed the City to determine if the offer was a bona fide offer of purchase. On the same date, Grieves sent an email to Legal Counsel indicating we are at an impasse.

Legal Counsel has also spoken with Tristan Manthey, attorney for Yacht Starship indicating the requirements of Article XXI. Attorney Manthey indicated that his client may be willing to provide less than 5 years of financial information, but as of today's date has not provided any information.

Legal Counsel has also communicated with Pinnacle Marine, the broker for the Sale. Pinnacle Marine has not provided any of the information requested under Article XXI. Note that the First Right of Refusal was specifically referenced in the Purchase Agreement between G&G Packet and Yacht Starship, with said agreement being drafted by Pinnacle Marine so all parties to the Agreement should have been aware of its requirements.

Despite the City's repeated requests to G&G Packet Company and explanations to the Broker and Purchaser's legal counsel on the City's right to information, none has been provided. The City Manager, Finance Department and Legal Department cannot complete their due diligence without said information. As we have no basis to determine if this is a *bona fide* offer or not, we recommend the City waive its first right of refusal.

**NEIGHBORHOOD CONCERNS:** None.

**IMPACT IF APPROVED:** The City's First Right of Refusal will be waived and G&G Packet can sell the Spirit of Peoria.

**IMPACT IF DENIED:** If the City moved forward with exercising its option, it would be making a \$1,000,000.00 purchase with no appraisal, no sea survey and no financial information to support the offer from Yacht Marine was a *bona fide* offer. Note that the City's agreement with G&G Packet expires on April 1, 2022 and then Grieves would be free to sell the Spirt of Peoria with no approval needed from the City.

**ALTERNATIVES:** The City could solicit another boat owner or operator to operate on the Riverfront upon expiration of the current lease on April 30, 2022.

**EEO CERTIFICATION NUMBER:** N/A

**WHICH OF THE GOALS IDENTIFIED IN THE COUNCIL'S 2017 - 2032 STRATEGIC PLAN DOES THIS RECOMMENDATION ADVANCE?**

1. Financially Sound City

**WHICH CRITICAL SUCCESS FACTOR(S) FROM THE COMPREHENSIVE PLAN DOES THIS RECOMMENDATION IMPLEMENT?**

1. Not applicable.

**DEPARTMENT:** Legal