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# MEMO

## Legal Department

**To:** Mayor Haila, Ames City Council

**From:** Mark O. Lambert, City Attorney

**Date:** January 30, 2020

**Subject:** Eminent domain for trails

At the November 12, 2019 Ames City Council meeting, the Council directed the City Attorney's office to further investigate the legality of the use of eminent domain for recreational trails.

Iowa Code chapter 6A governs cities' eminent domain authority. Cities are empowered to use eminent domain for "public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon cities." (Iowa Code 6A.3(6)). This would include recreational trails, among many other types of projects.

However, there are portions of Chapter 6A that make it clear that eminent domain may not be used for recreational trails on agricultural property.

There is little case law on this issue. There is one Iowa Supreme Court decision. In *East Oaks Development, Inc. v. Iowa Department of Transportation* ("DOT"), 603 N.W.2d 566, (Iowa 1999), the Iowa Supreme Court held that the Iowa DOT did not have eminent domain authority for trails generally (though the Court said the DOT was allowed to use eminent domain for a trail if it was redeveloping a road and putting a trail next to that road, and the trail had a public purpose such as reducing bicycle traffic on the road). But that decision is clearly rooted in statutory language very specific to IDOT's authority, and does not address the authority of cities to use eminent domain for trails. I believe this case has been misinterpreted as "you can't use eminent domain for trails," but, again, the decision is very specific to IDOT's statutory authority.

After I came to the conclusion that it was lawful for municipalities to use eminent domain to acquire property for recreational trails (on non-agricultural property), I checked with other city attorneys in Iowa and everyone who responded agreed with my conclusion. I know of at least one large city in Iowa (Sioux City) that has used eminent domain for recreational trails.

**My legal opinion is: It is lawful for cities to use eminent domain to acquire property for the purpose of recreational trails, as long as the property is not agricultural property.** If the City desired to put a trail on agricultural land, the City would still have the options of purchasing the property needed for the trail, or purchasing an easement on the agricultural property.

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