

FARMINGTON CITY COUNCIL
SPECIAL MEETING

A special meeting of the Farmington City Council was held on Tuesday, July 05, 2005, in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 267-1976.

The meeting was called to order at 7:15 p.m. by Mayor Campbell.

COUNCIL MEMBERS PRESENT: Bush, Campbell, Knol, McShane, Mitchell.

COUNCIL MEMBERS ABSENT: None.

CITY ADMINISTRATION: Clerk/Treasurer Cantrell, City Manager Pastue, Assistant City Manager Richards, Attorney Schultz.

DISCUSSION – RILEY PARK REGULATIONS

At the request of Mayor Campbell, City Manager Pastue provided an overview on a proposal to ban smoking in Riley Park. Pastue requested that Attorney Schultz provide background on this issue from a legal standpoint.

Schultz advised that a proposed ban comes down to two legal issues: pre-emption by state statute or an infringement on the rights of the public. He further advised that state statute would likely not be pre-emptive because the state has not reserved this issue to itself. He advised that the issue is as much a policy question as a legal one because this type of regulation is untested. He stated the issue is a matter of weighing the benefit to the public versus the burden on individuals. He advised that it is the “outdoor” nature of the proposal that is the issue.

Schultz advised that a policy discussion should address what it is the City wants to accomplish and what kind of regulation should be enacted to achieve that goal. He stated that he would like to open a discussion to determine Council’s issues and interests and then would respond accordingly.

Councilmember Mitchell stated Riley Park would be family-oriented and expressed his belief that smoking would interfere with the public’s enjoyment of the park. He further stated that a smoking ban would set a good example for youth. He noted that this Park is different from others due to its small size and proximity to commercial properties and dining establishments. As provided in a legal analysis from the City Attorney, he suggested looking to California for direction regarding this issue.

Schultz stated that he would continue to research this issue, recognizing that it is on the cutting edge.

Councilmember Knol asked Attorney Schultz about the philosophical differences between California and Michigan Courts, noting that California seems to be more progressive.

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Schultz agreed that California courts make regulation decisions that would not be made in Midwest courts. He advised that Michigan appellate courts are deferential to local regulations unless it is a statute or constitutional issue. He noted that if the City has a narrowly tailored regulation, a reviewing court would determine how it relates to the right to be left alone and occupy public space. He advised that if the regulation is framed in such a way so as to differentiate Riley Park it could work, however, it would not work in Drake or Shiawassee Park.

Mitchell cited the potential for filling the Park to capacity for concerts and the nuisance or hazard that smoke might cause in such a crowded area.

Knol asked about limiting smoking bans to events only, base limits on a certain number of people, or designate smoking areas.

Schultz responded that it would be easier to defend a smoking ban regulation that is tied to certain areas rather than events.

McShane expressed concern regarding enforcement, noting the City's cat leash law. She asked if alcohol would be served in the park. Pastue responded that it would not unless there is a special event requiring Council approval. McShane stated her concern about banning smoking but not alcohol. She expressed concern about where people would be smoking if it were not allowed in the Park.

Pastue noted the difficulty of enforcement and questioned the location of a designated smoking area.

McShane stated that it would be necessary to designate a smoking area with a receptacle and further stated her concern about allowing alcohol.

Schultz responded that alcohol is generally not permitted in parks.

McShane suggested the possibility of holding a public hearing regarding this issue.

Bush advised that before Council can proceed on a regulation it would be important to get input from the Public Safety Director.

Mayor Campbell expressed his opposition to a smoking ban, noting the difficulty of enforcement and legal liability.

Mitchell noted that a smoking ban regulation could be self-enforcing due to peer pressure. He expressed concern regarding smoking where outdoor seating has been granted and suggested that future permits include a ban on smoking.

McShane stated that the City should find a solution to the environmental concerns caused by smoking at outdoor seating locations.

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Schultz advised that he would research whether outside seating can be attached to a special land use approval. He noted that reasonable conditions could be attached to an approval.

McShane suggested that if people were restricted from smoking at outdoor seating locations, they might move to the Park area.

Knol noted that Wayne and Genesee Counties prohibit smoking outdoors in areas fewer than six feet from a door or window and asked if these restrictions had been challenged. She suggested that if six feet is allowed, then why not twelve feet.

Schultz responded that research did not show any challenges and he would check with the Counties regarding this issue.

Knol asked Schultz to also research the issue of smoking and non-smoking sections in an outdoor facility.

Bush suggested operating the Park for one year to determine if smoking is an issue.

Discussion followed regarding the use and design of the pavilion.

Council asked Attorney Schultz to continue to review options for a smoking ban.

Discussion continued regarding the park and pavilion and the rights of individuals.

DISCUSSION – CODE OF ETHICS

Council concurred to defer discussion on a code of ethics until their August meeting.

ADJOURNMENT

The meeting adjourned at 7:55 p.m.

Arnold T. Campbell, Mayor

Patsy K. Cantrell, City Clerk/Treasurer

APPROVED: AUGUST 1, 2005

Susan K. Halberstadt, Recording Secretary