

MINUTES
CITY OF FARMINGTON HILLS
CITY COUNCIL STUDY SESSION MEETING
CITY HALL – COMMUNITY ROOM
NOVEMBER 10, 2014 – 6:00PM

The Study Session meeting of the Farmington Hills City Council was called to order by Mayor Brickner at 6:10pm.

Council Members Present: Brickner, Bridges, Bruce, Knol, Lerner, Massey and Steckloff

Council Members Absent: None

Others Present: City Manager Brock, City Clerk Smith, Assistant to the City Manager Geinzer and Attorney Joppich

DISCUSSION ON ANTI-DISCRIMINATION ORDINANCE:

Mayor Brickner explained that following discussion on this ordinance at the last study session, some concern was expressed regarding the language relating to the definitions of gender and/or gender identity as well as the exception included relating to religion. He stated that Attorney Joppich since has reviewed the issue and received suggested language from the ACLU and has submitted some suggested changes to address these concerns.

Councilmember Steckloff clarified that her main concern was regarding the definition of gender and gender identity as she felt the definitions were too narrow. She commented that she preferred language that was used in an ordinance recently approved by Ann Arbor that used the word “sex” rather than “gender” and was defined as including gender, gender identity and gender expression. She stated that she feels the ordinance as proposed to City Council seems to go against currently allowed practices.

Mayor Brickner stated that the Ann Arbor ordinance was just recently passed so that language was not part of the ordinance at the time the City Attorney was reviewing other ordinances at the direction of Council. It is his understanding from discussions with the ACLU that this language is more acceptable to them and other ordinances are trending in that direction with regard to definitions.

Considerable discussion was held on the definition of gender identity and gender expression. Mayor Pro-Tem Bruce inquired if the proposed ordinance would allow for a male who identifies himself as a female but has not been through any surgical procedure, to play on an all girls sports team.

City Attorney Joppich explained that under the proposed ordinance, a male would not be allowed to play on an all girls sports team as outlined by Mayor Pro-Tem Bruce; however, if the language of the Ann Arbor ordinance was used, he would be allowed.

It was clarified that this ordinance would not apply to school sports as schools set their own policies; however, it could apply to other area sports teams, shelters, camps, etc.

Councilmember Knol expressed concern that if they allowed persons based on gender identity or gender expression to utilize certain facilities, this could allow for a male who identifies himself as a female to go to a women’s shelter for abused women and could potentially allow for male or female children at camps to be in dorm rooms or lavatories of the opposite gender.

Councilmember Steckloff stated that she is still concerned with the definitions as proposed and feels that the exceptions should be based on the definitions.

Councilmember Lerner stated that the City has discussed this issue on several occasions and the ACLU originally provided suggested language to which they now have some concerns. He stated that if the ACLU wants support for a change at the State level, he feels Council would be supportive of adopting such a resolution urging the State to do something; but he is not inclined to further change the language of the proposed ordinance as suggested. He feels that the proposed ordinance as drafted is a good document and one that the ACLU helped to draft.

Jay Kaplan, ACLU, agreed that the language originally provided now causes some concern for the ACLU. The ACLU prefers the language of the ordinance passed by the City of Royal Oak with regard to definitions and exceptions. He stated that with regard to the religious exemption, the ACLU believes that it includes non-religious functions and activities in the definition and they do not feel that is appropriate.

Councilmember Bridges feels that including gender identity and gender expression would be very difficult to enforce under such an ordinance

Mayor Brickner inquired first about the definitions in the proposed ordinance and what Council would like to see changed, if anything.

Councilmember Lerner felt the draft ordinance was fine as presented.

Councilmember Massey commented that he feels this issue should be determined at the State level; and if there has been some movement in that direction, he would propose holding off on any local ordinance and consider a resolution urging the State to address this issue.

Mayor Brickner stated that he is not confident the State will move forward on this issue, but suggested holding off on considering an ordinance to see if the State takes any action yet this year. He commented that some of this language is new to him. He agrees with keeping the exceptions in the ordinance as presented. His main concern is that people are not discriminated against in any way with regard to housing and employment.

Councilmember Steckloff stated that she did not object to the exceptions, only the definitions. She felt some education was needed on what constitutes transgender. She referred to an article regarding a 14 year old Farmington Hills boy that was going through the process of changing his gender, noting that this is an issue that needs to be discussed. She did not object to waiting to see if the State was going to address the issue this year, but did not want to wait too long on the issue.

Councilmember Massey felt that any regulations should be consistent throughout the State.

City Attorney Joppich pointed out that the Royal Oak ordinance uses the term "sex" rather than "gender"; but doesn't define the term "sex". He noted that other than that, it contains the same language as the proposed ordinance.

Councilmember Steckloff agreed with using the term "sex" rather than "gender".

Mayor Pro-Tem Bruce also agreed with removing the terms gender and gender identity and keeping the exceptions in the ordinance as presented.

Councilmember Massey stated that he was comfortable with that change, but still wanted to wait to see if the State was going to take action on this issue first.

Councilmember Lerner stated that he had no objection to that change, but still preferred to keep the ordinance as originally proposed.

Councilmember Knol commented that she wants the ordinance to include exceptions as they relate to athletics, women shelters, camps, etc., including locker rooms and lavatories.

Discussion ensued on defining the term "sex". Attorney Joppich stated that Council will need to determine how broad it wants to be in defining the term "sex". He noted that as the proposed ordinance is written, the term "gender" would include the gender that someone was born or if they had surgical procedures to change their gender.

Mayor Brickner inquired about the exception included in the ordinance as it relates to religion. He stated that Attorney Joppich has suggested removing some of the language in Section 15.5-8A to address some of the concerns of Council and the ACLU.

Councilmember Knol commented that there is a lot of case law on this issue already as part of the Civil Rights Act, Fair Housing Act, etc. She expressed concern with the word "denomination". She inquired if the ordinance would apply to a faith-based recovery program.

City Attorney Joppich stated that the ordinance as proposed would apply to that situation and one could discriminate based on denomination. He stated that if this section were removed in its entirety, one would still be subject to the ministerial exception in state or federal law. He stated that he would further review the use of the word "denomination".

Mayor Brickner stated that Council had to move on to the other item on the agenda as they had their regular meeting starting in a few minutes.

It was the consensus of Council to wait on bringing this issue back for further discussion until it is known whether the State will take action on the issue this year.

DISCUSSION ON MUNICIPAL INCENTIVES TO ENCOURAGE ENERGY EFFICIENCY:

Assistant to the City Manager Geinzer mentioned that the Georgetown University Energy Prize Plan has been submitted. He indicated that one of the concepts of the plan was incentives and indicated that the City has discussed the possibility of discounted permit fees for residential homes that are making improvements that are more energy efficient. He inquired if City Council would be interested in receiving more information at one of their Study Session meetings on this concept.

Mayor Pro-Tem Bruce inquired if such a program were legal. Attorney Joppich responded that as long as there was a basis and rationale for doing so, then yes it would be legal.

Mr. Geinzer stated that it would most likely be offered when people are replacing furnaces or AC units, installing new windows or doors, etc. He noted that the standard criteria would be utilizing products that are energy star certified in order to obtain the discounted fees.

City Council concurred with receiving more information on this potential program at a future study session meeting.

Councilmember Massey stated that one concern he expressed before with the plan was with regard to the sustainability of incentives. He also mentioned that the permit fees are based on a revenue-neutral model and asked Mr. Geinzer to include in his information to Council the trade-off for the City and whether that trade-off is worth providing such a program.

ADJOURNMENT:

There being no further discussion, the meeting adjourned at 7:28 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Smith', with a stylized flourish extending to the right.

Pamela B. Smith, City Clerk