

**Bloomington Community Farmers' Market
Farmers' Market Advisory Council (FMAC)
Meeting Minutes from December 9, 2019 at 5:30pm
City Hall Legal Conference Room**

Council Members in Attendance:

Bruce McCallister, Cortland Carrington, Suzanne Mann, Leslie Sommer, Rachel Rosolina, Kathy Aiken, Rebecca Vadas

Council Members Absent:

Robin Kitowski, Carmen

Staff in Attendance: Marcia Veldman, Sarah Mullin, Leslie Brinson, Barbara McKinney
Park Board Members- Les Coyne, Lisa Thatcher

Community Members in Attendance: About 40 in attendance

1. Call to Order

2. Approval of Minutes

November meeting minutes were approved.

3. Business

Legal Panel Discussion on Saturday, December 7 in City Hall

Advisory council members offered their comments on the event. Kathy liked the Chief of Police from Charlottesville's suggestions. She said the City needs to be much clearer in stating rules for protestors and vendor policies in plain communication, not legalese. She said there needs to be two-way communication on all sides. Becky heard that we cannot police thoughts. As a vendor she has to serve everyone that comes to her booth, regardless if she agrees with them. Bruce commented on the differences between a City run and private run market. Government agencies cannot exclude anyone based on political beliefs; private markets can. There are things the City can do as far as making statements about their beliefs. Marcia added that the questions that were submitted at the panel but not addressed will be answered online.

FMAC Statement Regarding Food & Beverage Artisan Proposal

Marcia followed up with the Urbana, IL Farmers Market which is a city-run market similar to ours, run through their office of Economic Development. They had about 100,000 visitors in 2018. They have 1 full time (39 hours max) staff person and some part time seasonal staff. They run May-October. All vendors pay a \$25 fee per week. They have an info booth fee, too. Their revenue is \$90,000. They don't do much in the way of scheduled entertainment or events. They have a cost recovery goal of 100% but they have yet to meet it, and the City fills the gap.

Bruce read the FMAC Statement Regarding Food & Beverage Artisan's Proposal which strongly encourages the Park Board to restructure fees for the artisans.

“Information presented by the food and beverage artisans makes a strong case that the way the city charges for their participation in the market is not aligned with other markets in the Midwest.

The prepared food space at the market has evolved over the years to become integral to the market and is an important part of the reason people come to the market. Their presence enhances the atmosphere of the market.

Given the increased uncertainty around the market we urge the Parks Board to restructure the fees charged to the food and beverage artisans. We also want to make clear that we absolutely oppose any increase in fees for farm vendors to make up any lost revenue.

The market has been a positive part of the Bloomington and Monroe County scene for decades. We all know people who think of the market as one of the primary reasons that makes Bloomington a more inviting city to live in. It provides a tremendous positive economic impact and enhances the city's image. The market is worth any investment the city chooses to make to create the best chance that the market continues to thrive.”

A motion was passed to accept the statement.

Following up on the same topic, Kathy asked if the FMAC should make a recommendation regarding the proposed fee. Suzanne said it would strengthen the case by giving a number to indicate how strong we feel about the change. Kathy suggests that it goes to 5% in 2020, showing a definite commitment, but with decreasing percentages for the following years until it gets to a point where the fees are more equitable across the board for vendors. Also, not increasing farm vendor fees in 2020 is important due to all that farm vendors have been through in 2019. Suzanne and Rachel said we should aim to be in line with other farmers markets in the Midwest and move toward a set fee for food and beverage artisans in the future. Kathy said in light of everything that happened this year, and the fact that we're normally a little over the 100% recovery, it would be wise for the City to invest to support the food and beverage artisans even if we don't meet the 100% goal for a few years. Bruce commented that he doesn't recall any farmers markets that charge a percentage fee. Eric Schedler from Muddy Fork Bakery replied that in their research he didn't find any farmers' markets that charge a different fee to farm vendors and non-farmer vendors.

An amended motion was made: The FMAC recommends reducing the food and beverage artisan fee to 5% for 2020 season to show good faith with the goal of reaching an equitable set fee (not percentage fee) with farm vendors within 3-5 years. The motion passed 6 – 1.

Reviewing Proposed Changes to Farmers' Market Handbook

Marcia mentioned that these documents will be posted to the City website after this meeting. She said she is moving forward with preparing documents as if the City will manage the Market next season due to the timeline in early 2020. These are preliminary working drafts that are open to

input. They will be presented at the January 9th Park Board meeting if the Board decides to move forward with management of the market.

Marcia reviewed the changes. See the draft document for all changes. Some of the most significant changes are listed here:

The Farmers' Market mission statement draft will go to the Broadening Inclusion subcommittee that meets Thursday, December 12.

The vision statement is new and needs some work. The group tabled that discussion for a later meeting.

The Tuesday Market will move to the Switchyard Park. There will be a site visit on January 18th for interested vendors, assuming we move forward with managing the Market.

The Advisory Council guidelines have been updated to include 2 food and beverage artisan representatives. This still needs to be approved by the Park Board.

There is an update that vendors may only display items/signs related to their products/business.

There is an update to payment of fees for farm vendors that reserve spaces and in the past have paid all fees for the season in February. In 2020 ½ payment will be due in February for May-October Market season. The remainder of the payment would be due on July 1st.

The City retains the right to relocate vendors for reasons of public safety and/or the efficient functioning of the market. Becky asked who determines if something qualifies as a public safety concern. Marcia replied that that decision would be made in consultation with the police and legal departments.

Language was updated related to points earned in the event of a closure of Market.

There are new statements related to the City's rights and vendor behavior. One statement was that behavior outside the market that relates to the Market must not reflect poorly on the market or the reputation of the City and must be consistent with the mission and goals of the Market. Becky asked for clarification about what this statement means and if an example could be given. Barbara replied that she didn't have an example off hand, but it would obviously have to be applied according to the Constitution. Her understanding is that we wanted to have something in the contract in case someone was advocating violence.

There is new language being added to all City contracts with independent contractors regarding harassment from City employees. If the independent contractor feels like an employee of the City has harassed them or one of their employees, they have the right to file a complaint.

Vendors must display a sign at their stand identifying their name or the name of their farm/business.

There is a new section on expectations for vendors and the City. See draft document for details.

Rachel brought up the question regarding religious objections to having a sign. Barbara commented that she's not sure that signage is in violation of anyone's religion, but if it is, the City has an obligation to accommodate for that. Otherwise, vendors will have to comply.

A member of the public asked if vendors would be reimbursed for fees should the Market close. Marcia commented that vendors who paid in advance did receive refunds for the days the Market was closed this season. Marcia agreed this is a good thing to add to the contract.

A member of the public asked clarification about the requirements to sell meat. Marcia pointed him to the Value Added Foods category in the handbook. There is also a value added food exhibit that specifies requirements about meat vending available from Market staff.

A member of the public asked about the vendor etiquette section stating that vendors have to be consistent with the values of the Market. She felt like that was different than what was stated at the legal panel on Saturday and asked if the City felt confident that the change would be an enforceable rule. Barbara said that this draft was written prior to that meeting and that statement is something the City may need to reconsider.

A member of the public asked if the documents had gone through the legal department. Barbara replied that they have, but that was prior to the forum where they got additional information. It was also asked what the timeline is to have this approved by the Park Board. Marcia replied that we're accepting comments/input through probably December 31st and the documents will be taken to the Park Board on January 9th. First the Park Board will decide if the Parks Department will continue to manage the farmers market, then if it is affirmative, we will proceed with approval of these documents.

A member of the public said a code of conduct is missing from the Market. He recommends the following: be nice, be respectful, be responsible and volunteer.

A member of the public asked for clarification about the fees being paid in two installments. Will this be included in the contract/handbook or would it just be announced in a newsletter to vendors (the Market Beet). Marcia commented that we have internally decided that we can collect fees that way and it doesn't need to go to the Parks Board.

Jennifer, a member of the public and vendor, commented that she really liked the last paragraph in the resolution to support the fee restructuring for prepared food vendors and wondered if the FMAC would consider writing a recommendation to the Parks Board in support of the City continuing to manage the farmers market. She then said maybe the first question is does the

FMAC support that recommendation? Bruce replied that they have not written a statement at this point. He wanted to hear tonight's discussion first.

Draft Changes to the Application

Marcia presented draft changes to the application. See draft for all changes.

Draft Changes to the Contract

Marcia presented draft changes to the contract. See draft for all changes. Some of the most significant changes are listed here.

Vendors and stand assistants must be listed with a full legal name and sign the contract. If additional stand assistants need to be added to the contract, they would have to notify Market staff the Thursday prior to the Market day. Eric Schedler asked if vendors and stand assistants were going to have to show identification with their applications. Marcia replied that that is not the intention.

The terms of breach were updated.

Bruce stated that the FMAC will not meet again before the Parks Board meeting on January 9th so this is their opportunity to provide feedback.

There was a motion to accept the preliminary changes with the additional comments for the draft vendor handbook, contract, and application. The motion passed unanimously.

Rules of Behavior

Barbara McKinney reviewed draft rules of behavior. She said it's not subject to the FMAC's approval, but feedback is welcome. It is in draft form and ideas from Saturday's panel as well as other feedback will be considered before the final draft is made.

The rules clarify where the free speech area is, make it clear that vendors can only distribute information related to their business and not political speech, and define what can happen in the area of commerce. See the document for details.

Marcia commented that there are also policies for busking and Info Alley that need to be reviewed to make sure they are all consistent with the Market rules of behavior. Suzanne asked if there is language regarding the content of what buskers sing/perform. Marcia replied that there is language that states content has to be appropriate for all ages.

A member of the public said that she was surprised to hear that we don't curate buskers. Marcia clarified that it's not okay for the buskers to interrupt commerce.

Another member of the public asked if a political song would be able to be sung. Marcia replied that requiring that it's family friendly is as far as the policy goes.

Kathy asked for clarification about people who are redirected to Info Alley not being charged a fee for that day. She asked if someone may take advantage of this and do it week after week. Barbara stated that we may want to clarify that it only applies to the first time. Becky asked for clarification on Info Alley fees. She asked if everyone has to pay the \$10 registration fee and the \$10/week fee to participate in Info Alley. Kathy said that they've had questions about if a fee could be waived if an organization didn't have a lot of funds. Marcia said that they're content neutral and everyone has to pay the fees. Becky asked if organizations are allowed to collect donations or sell t-shirts, etc. for their cause. Marcia replied that there's no selling of anything in Info Alley, but the passive acceptance of donations is allowed. You can have a jar on the table, but you can't ask people to put money in it. Bruce asked if there was still an area of Info Alley where there is no charge. Marcia confirmed that there is a free area. A member of the public asked if it was acceptable for an organization to charge \$10 for a t-shirt under the guise of a donation. Marcia replied that it is not acceptable. The policy states that anything on display in Info Alley has to be available for free.

A member of the public asked for clarification on the rules of behavior related to picketing, etc. He commented that the City wants to ban pickets and demonstrations in the Market even when the source of the demonstration is in the Market and asked if that's what's being proposed. Barbara replied, "Yes." Then he asked if the City is looking forward to getting a lot of people arrested next year. Barbara said no one is looking forward to that. He continued that when the source of the demonstration is in the Market, he doesn't feel that time, place and manner restrictions apply, and he thinks it's legally challengeable and unconstitutional. Barbara said that we can agree to disagree.

Another member of the public asked if the rules of behavior section on protest activity is designed to change anything from how protest activity has been enforced in the last few months or is it just putting in writing the way that it was enforced this year. Marcia replied that these rules further clarify what is not allowed in the Market space. Cortland commented that individuals wearing t-shirts that have boycott messages are allowed to be in the Market as long as they are circulating and not disrupting commerce. Barbara said that is accurate. A member of the public said he was amazed at how many things suggested tonight are blatant violations of the First Amendment – restricting what vendors can have at their booths will get you sued, limiting protests in this incredibly vague way will get you sued. Everything you're saying is a clear violation of the First Amendment.

In reference to what Jennifer asked earlier, Bruce stated that what the City has to consider on January 9th is if they have a way to manage the Market effectively, and that means providing vendors a safe place to sell, and allowing space for protest. If the City does not have a way to manage that, then he think they really need to consider whether or not the City should be in the business of managing the Market going forward. This Market is extraordinarily fragile. All it will take is a couple weeks of disruption early in May and people and vendors will stop coming.

Concerns of vendors' businesses and protestors are both real concerns and the Board needs to consider if they can manage those two competing concerns.

A member of the public and vendor asked if the Parks Board decides not to manage the Market next season, do they have any alternatives to offer vendors or will vendors be scrambling? Bruce replied that his understanding is that if the City says they're not going to do it, they have to step away from it completely.

A member of the public clarified that the protests aren't about beliefs, they're about specific concrete actions that these vendors have taken. They appear to have violated their contract multiple times and the City seems to be bending over backwards to avoid taking any action against them. He continued that there will be more protests in the spring if that vendor is present.

A member of the public asked if the FMAC is recommending that the City step away from managing the market. Bruce asked the FMAC if they want to make a recommendation or not. Cortland said that he's talked to several vendors and FMAC representatives about privatizing. He referred to Broad Ripple that is a non-profit that leases space from the City. The non-profit can establish any vendor rules they want. That seems like an attractive model. There is support among vendors he's spoken to for exploring that and looking for other options. They want to have more concrete controls over who can and can't vend. One of the FMAC members stated her concern is once you start that, where do you draw the line. A member of the public commented that he likes what the City has come up with and thinks it's an improvement. Another member of the public said that if the City privatizes to circumvent the First Amendment and a certain vendor, that is a cause for concern. Jennifer stated that there's nothing more important on the agenda than whether the FMAC thinks that the City should do what is necessary to keep the Market going or if they think it should privatize and arise in another place with no electricity, no storm shelter, no bathrooms, sort of back to the beginning. Bruce said he doesn't know what to suggest for the City to do to balance these two very strong and competing concerns. Vendors have legitimate concerns about their businesses. People who feel threatened have legitimate fears. Both of those things are true. He also stated he doesn't know how much control the City has to really impact what happens at the Market. Becky stated that they've been vending for 30 years at this Market. She remembers drawing up the plans for the move to Showers Common. If we privatize, trying to find a totally different location that meets all of our needs, the locale, etc. will be difficult. The Market helps downtown businesses. Going to another place will not meet our needs. Finding another location with parking and all of our needs is not easy. Bruce asked if the committee wanted to make a statement saying we should do whatever it takes. Kathy said she's not sure we've had adequate time since it wasn't on the agenda. Bruce says he's thought about it all season and if we're going to make a call, we have to do it tonight. Marcia said that if they aren't prepared to make a vote, the Park Board will see the minutes and hear the individual representative's concerns. Cortland said the City should consider how to possibly transition from a City owned market to a private market where the private entity can rent Showers Common, not to circumnavigate First Amendment rights, but for a liability purpose. For example, the City doesn't require vendors to have a liability insurance policy. Becky feels strongly that the market

should not be privatized. Rachel echoes what Cortland said, and speaking for herself, she is very frustrated that a single vendor is putting us in this situation. It frustrates her that their actions are hurting fellow farmers. She does think that protests only work when they're disruptive. That's what protests are. She loves our Market and that's why she signed up to do this for 6 years. The only way to move forward is to go private and hopefully have the same space. Suzanne is very conflicted. Leslie S. says she is worried about privatization. What if they're not as inclusive as the City is. She has worked for a private market and they are two very different beasts. If we are to privatize, there needs to be a significant proposal and a group that can actually run this big of a Market successfully. Kathy says that after hearing what the panel said on Saturday she wonders if privatization is going to be the cure for the problem. Becky said that she heard at the panel that if a private entity rented the Showers Common they'd have to follow the same rules that the City does. Kathy also said trying to manage a private market is a huge responsibility.

A member of the public commented that the current vendor committed fraud in another Market. The current vendor hired a stand assistant who shouted transphobic things at someone during Market hours, the vendor hired stand assistants and gave false names multiple times. Every single one of those is a violation of contract. The City canceled Market 2 weeks in a row which is a violation of their obligation to hold a Market. If the City doesn't enforce a contract, what's the point of writing up a new one?

A member of the public asked if the Market is privatized does the City lose funds for SNAP and WIC. Kathy said a private Market could still manage those programs.

4. Adjournment

Adjournment at approximately 7:15pm.