

**CITY OF WAUKESHA****Administration**

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| <b>Committee:</b><br>None   | <b>Committee Meeting Date:</b><br>Not applicable                           |
| <b>Agenda Item Number:</b><br>18-0512   | <b>Common Council Meeting Date:</b><br>4/5/2018                            |
| <b>Submitted By:</b><br>Brian Running, City Attorney  | <b>City Administrator Approval:</b><br>Kevin Lahner, City Administrator KL |
| <b>Finance Department Review:</b><br>Rich Abbott, Finance Director <a href="#">Click here to enter text.</a>  | <b>City Attorney's Office Review:</b><br>Brian Running, City Attorney BER  |
| <b>Subject:</b><br>Approval of stipulation for dismissal of Friends of Frame Park v City of Waukesha lawsuit. |  |

**Details:**

With the withdrawal of the proposal for baseball at Frame Park, the lawsuit filed by the "Friends of Frame Park" group has become moot, meaning the case is no longer appropriate for determination by the Court. Ordinarily, when a case becomes moot, the parties will agree to dismiss the lawsuit, and if the dismissal occurs early enough in the case, it will be without the award of any costs to any of the parties. The agreement to dismiss is done with a pleading called a "stipulation for dismissal."

All parties in the Frame Park lawsuit have now agreed to a stipulation for dismissal without prejudice and without costs. Both the lawyers for the Friends of Frame Park group and for Big Top Baseball have already signed that stipulation, but I could not without the Council's approval. You are now being asked to approve that stipulation and authorize the City Attorney to execute it.

The stipulation asks the Court to dismiss "without prejudice," and without awarding any costs to any party. "Without prejudice" means that the parties can raise the same issues again in another lawsuit in the future. That's because the Court never got to hear any of the parties' arguments, so no final decisions have been made about anything. "Without costs" means that no party will be given a money judgment against the other parties to recover costs they incurred in the lawsuit.

The City had no costs in defending the lawsuit, so it's okay from our point of view for the dismissal to be without costs. And, a dismissal without prejudice means the City does not give up any of its rights, defenses, or legal arguments if another lawsuit is filed in the future. There is no disadvantage to dismissal.

**Options & Alternatives:**

Because the case is now moot, we don't have any practical alternative. The court will not hear a case that's moot.

**Financial Remarks:**

There is no financial impact to the City.

**Staff Recommendation:**

Approval of stipulation to dismiss the lawsuit without prejudice and without costs, and authorization for City Attorney to execute it.