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*Debra Eisdale*

To: Midland City Council

As Presented To: Parks and Recreation Commission

By: James O. Branson III, Midland City Attorney

Date: September 1, 2015

Filed On: September 2, 2015 per §8.4 of the Midland City Charter

RE: Legal Opinion of the Midland City Attorney  
City of Midland Owned Open Space Land Use - Putnam Park

The catalyst for this legal opinion is the public issue of Putnam Park and the discussion of locating a farmers market on and around the property commonly called Putnam Park. (See the Attached Map)

There is a significant difference with discussions of facts, emotional positions, past intentions and misunderstood positions and involvement of prior City Councils' actions and current property status.

This legal opinion is to present what can be done on City owned property; NOT what should be done. To present the status of certain lands held by the City and to link the facts with the legal position based on documented research and actions by prior commissions, councils and court actions.

The term "park" must be looked at to its use in the Charter and Code of Ordinances as well as the general term "park". Also, the specific provision of Section 5.7 of the Midland City Charter and how it relates to ordinance established parks as well as non-ordinance parks.

Currently (September 1, 2015), the City has sixty seven (67) ordinance **established** parks and fifteen (15) non-ordinance parks. In regards to ordinance established parks, sixty three (63) of those parks were **established** by the Midland City Council by official action on May 21, 1975. Council action of May 21, 1975 came about by a previous action of Council dated March 3, 1975. The City Council Official Summary of that date states:

"Approved policy reaffirming that all park lands in the city shall not be developed for use other than parks and recreation by the following vote: yeas – Diesen, Friedle, McCreadie, Holthofer: Nays – Goodenough."

The May 21, 1975 Council action **established** sixty three (63) parks. The word “established” appears before each and every park adopted in the May 21<sup>st</sup> ordinance. The word “established” is very important as on June 2, 1975 the City Council authored an amendment to the Midland City Charter, specifically Section 5.7, modifying previous language to include the phrase “once established”. Even the whereas clause of what was presented to Council on June 2, 1975 for the proposed Charter amendment set out the importance of the “once established” language. This Charter amendment language was put before the voters on August 5, 1975 and was passed. It is still a part of our current Charter, reading as it did when passed and added to our Charter August 5, 1975. The section reads in its entirety:

**Sec. 5.7. Parks and recreational facilities.**

The Council shall have power to enact all ordinances deemed necessary for the establishment, maintenance, and protection of all parks and recreational facilities, together with the improvements thereon and appurtenances thereto, owned or hereafter acquired by the city either within or without its corporate limits. **Once established**, no park shall be discontinued or used for purposes other than public recreation, natural preserve or as a greenbelt unless such discontinuance or other use shall be approved by a majority of the electors of the city voting at a general election. [Emphasis added.]

Therefore, this Charter amendment gives protection to “established parks”. In addition to the sixty three (63) ordinance established parks by Council action on May 21, 1975, four (4) additional parks have been established by ordinance. They are Thrune Park (1981), Hart Park (1990), Pere Marquette Rail Trail (1996) and Theis Park (2000).

In summary, there are sixty seven (67) ordinance established parks. There are fifteen (15) other non-ordinance parks. There are approximately 2,500 acres of parkland.

Putnam Park is not an “established park” by ordinance and therefore does not fall under the protection of Section 5.7 of the Midland City Charter. Regardless of how long the property has been called a park or its history or its use, it is not, by definition, an established park. It is simply City owned property. It has been City owned property since the late 1960’s.

The property known as Putnam Park was property acquired by the City through condemnation proceedings in the Midland Circuit Court. There were eleven (11) parcels acquired by the City from individual owners and paid for at the end of court proceedings after establishing the correct amount of value. These proceedings started in 1966 and were handled by the then City Attorney Joel Kahn. Only two (2) of the eleven (11) condemned parcels were within the area now called Putnam Park. Official bridge construction started in August 1967 and was completed in September 1968 with a formal dedication, ribbon cutting ceremony, parade and a bridge walk occurring October 2, 1968. The theme for the bridge opening was “Bridge of Friendship” to reunite Midland with the neighbors on the west side of the river. The bridge cost \$1,888,000.

Why the bridge name of Dr. Mark E. Putnam? The Midland Daily News article dated July 30, 1968 explains it all.

Midland's city council unanimously named the new bridge Monday evening in memory of Dr. Mark E. Putnam.

Prior to his death in 1960, Dr. Putnam had been executive vice president of the Dow Chemical Company. He had been associated with Dow since 1915 as an organic chemist and industrial leader.

It also resolved "that the new high – level bridge crossing the Tittabawassee River in the City of Midland be designated the Dr. Mark E. Putnam Bridge for Dr. Putnam's contributions to the development and success of our community."

Mayor H. C. Allison explained that a committee of five citizens had been asked to recommend a name, based upon consideration of a deceased individual's contributions to the development and success of the City of Midland.

The committee was composed of Dr. W. R. Collings, Dr. E. R. Britton, William A. Groening, Jr., John M. Henske and Norman Rumble. This committee recommended the name of Dr. Putnam.

The area around the newly constructed bridge was simply needed and acquired to build the bridge. The land not used directly for the hard road surface was retained by the City as turf areas. The 1968 -1969 Annual Report of the Parks and Recreation Department gave first insight to the turf area and its future use. It stated:

One new area was added to the Parks Division maintenance, this past year, with the completion of the Putnam Bridge. A small area on the north end, plus the banks, on both ends, will be maintained as turf areas. Plans are underway to put benches, walks, shrubs and flowers in "Putnam Park".

On May 21, 1975 the Midland City Council acted to "establish" sixty three (63) parks by ordinance with an intent and plan to firmly protect, by Charter, their use. This was five (5) years after the Putnam Bridge dedication. Clearly if Council wanted to add the right of way turf area of the Putnam Bridge project as an "established park" it would have done so at that time. It did not.

So what we have left is simply excess bridge building acquired property deemed turf area owned by the City.

Therefore, without being an ordinance established park this property does not have the Charter protections and use requirements as found in Section 5.7 of the Midland City Charter. This property is not subject to a vote of the people for its use. Putnam Park is listed as a Mini Park in the City of Midland Parks and Recreation Master Plan 2015 – 2019, has no programed activities and is set out as open space. It is included as property that is on a scheduled maintenance program.

The above facts set out the legal status of the land known as Putnam Park. The land can be used as any other right of way within the City of Midland as allowed under Section 22-1 of the Code of Ordinances which states:

**Sec. 22-1. Use of public right-of-way.**

(a) Any use or activity within the public right-of-way shall first require permission from the city council, either directly or as delegated by ordinance, except:

- (1) The regular movement of vehicles and pedestrians when conforming to applicable traffic regulations.
- (2) Landscaping and landscape maintenance not constituting a traffic hazard as determined by the city's traffic engineer.
- (3) Picketing, either for economic or political purposes, when conducted in conformance with Chapter 16 of this Code.
- (4) Any work by public employees or persons under contract to a public agency.
- (5) The proper placement of refuse for collection by city forces.
- (6) United States Postal Service boxes, or individual mailboxes for mail delivered by the postal service, when any such box is kept in good condition and does not constitute a traffic hazard as determined by the city's traffic engineer.
- (7) Receptacles for newspapers only when attached to a support with a mailbox.
- (8) Public utility facilities and operations when in accord with a state or city franchise, applicable plats, and this chapter.

(b) Contractors' trailers, reasonable quantities of material for adjacent construction, and certain structures and/or appendages thereto may be located within the public right-of-way in accord with Chapters 44 and 45 of the Uniform Building Code as adopted by this Code.

(c) The city council hereby delegates the review and approval of requests for neighborhood block parties to the city engineer who may issue a traffic control order permitting such activity.

Several additional points to make clear.

1. As of the writing of this opinion the City of Midland does not own or operate the commonly known "Farmers Market". The property at the end of Ashman Street is City owned property – it is not a park; it is City right of way property. It is currently leased to the Chamber of Commerce for the Farmers Market operations on Wednesdays and Saturdays only. The City of Midland does not run it! Should the Chamber decide not to operate the Market it would close. Obviously a different group or organization could request to utilize or lease this space from the City.

2. Sales issues in parks or within the City right of ways. If sales are approved by the City then they can occur. In most cases, as was found with the old Civic Arena holding the gun show, Midland Home and Garden and other major events, they were all open to the general public. Even though the activities of a farmers market, gun show, home and garden shows are not traditional sporting events they are clearly recognized as recreational. There is an economic benefit to the community and a social and leisure time recreational benefit for the public who chose to attend. The benefit to the large number of members of the public that attend these events cannot be achieved without necessarily benefiting the promoters, private group or organizers who put on the event. The private benefit in most cases appears to be minimal when it is looked at in relation to the public benefit and public participation in the activity.

Therefore something like a farmers market is truly a form of public recreation which could be allowed even in an ordinance established park within the City of Midland when viewed in relation to the public benefit conferred by the activity.

Conclusion:

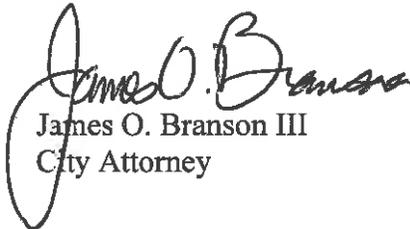
Putnam Park is not an ordinance established park subject to the requirements and protections of Section 5.7 of the Midland City Charter. The land is City of Midland right of way property.

The property can be used as allowed under Section 22-1 of the City of Midland Code of Ordinances as it relates to right of way uses.

This legal opinion sets out the legal status of the property known as Putnam Park. It sets out what can be done with the property; not what should be done with the property.

Public input, commission recommendations and Council consideration and direction is the next course of discussion.

Respectfully submitted,



James O. Branson III  
City Attorney

**City of Midland Property**

