

MAYOR
Hal J. Rose

DEPUTY MAYOR
John Dittmore

COUNCIL MEMBERS
Daniel Batcheldor
Pat Bentley
Adam Gaffney
Barbara A. Smith
Andrea Young



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CITY COUNCIL SPECIAL MEETING

MINUTES

July 16, 2020

1. CALL TO ORDER

Mayor Rose called the special meeting to order at 6:37 p.m.

2. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENT MEDITATION

Mayor Rose led the Pledge of Allegiance followed by a moment of silence.

3. ROLL CALL

Attending in person: Mayor Hal Rose, Deputy Mayor John Dittmore, and Council Members Pat Bentley, Adam Gaffney, and Andrea Young.

Attending remotely: Council Members Barbara Smith and Daniel Batcheldor.

Also present in person: City Manager Scott Morgan, City Attorney Morris Richardson, Information Technology Director Tom Bradford, Police Chief Rick Wiley, and City Clerk Cynthia Hanscom.

4. DETERMINATION OF JUSTIFICATION

Deputy Mayor Dittmore moved to determine the special meeting was justified to consider the emergency ordinance to require face coverings in the City. Council Member Young seconded the motion, which passed 7-0 in a roll call vote.

5. PROPOSED ORDINANCE TO REQUIRE MASKS

City Attorney Richardson presented a proposed ordinance as directed by Council to consider the mandating of mask in essential facilities in West Melbourne.

Maria Stahl, Brevard County Department of Health, provided statistical data on the number of positive COVID-19 cases, the percentage of positive cases and the number

deaths. She also commented on the number of long-term care facilities and the number of cases in those facilities. Ms. Stahl gave information on the capacity for the hospitals and the number of intensive care beds available. She stated the message going out is for people to wear a mask in public places and to social distance at least 6 feet.

Deputy Mayor Dittmore sought confirmation that wearing masks would reduce the spread of COVID-19. Ms. Stahl replied that it would reduce contamination between two people. Deputy Mayor Dittmore asked about key Brevard County Health Department concerns. Ms. Stahl stated the concern was the increase in the number of cases going forward, which would result in more rapid increases as well as more deaths.

Council Members asked about the statistics and the number of higher risk individuals. Ms. Stahl provided information on the testing and the importance of wearing a mask for contact between two individuals. She also provided information on the types of masks and the level of protection.

City Attorney Richardson provided a presentation on the ordinance. He provided a background on the COVID-19 virus and previous actions taken by the state. He noted that West Melbourne was considering an ordinance because the zip code 32904, which includes West Melbourne, had a high number of cases and was considered a hot zone. He said a significant portion of people lack symptoms and can transmit the virus. This transmission can be reduced with face coverings. He provided documentation from the health care industry to encourage people to wear masks when out in public.

City Attorney Richardson indicated the ordinance requires (1) that all businesses with store fronts are required to post their face covering policy, (2) essential businesses would need to mandate face coverings for employees, and (3) require face coverings for all customers in essential businesses. He commented on the 10 businesses that were proposed to be considered essential, which was based on high volumes of customers.

City Attorney Richardson explained that there were five exceptions to the ordinance. He also reviewed the penalties. He stated that the constitutionality of the requirement to wear masks had been challenged, but the Leon County mask mandate had been upheld against constitutional challenge.

City Attorney Richardson read the title of Ordinance No. 2020-05:

EMERGENCY ORDINANCE NO. 2020-05

AN EMERGENCY ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, PROVIDING FOR INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS; REQUIRING ALL BUSINESSES TO POST THEIR FACE COVERING POLICY AT THE ENTRY OF THE BUSINESS TO ADVISE CUSTOMERS, PATRONS, EMPLOYEES, AND BUSINESS INVITEES OF SUCH POLICY PRIOR TO ENTERING THE BUSINESS; REQUIRING ESSENTIAL BUSINESSES TO MANDATE FACE COVERINGS FOR EMPLOYEES; REQUIRING INDIVIDUALS TO WEAR FACE

COVERINGS WHILE INSIDE ESSENTIAL BUSINESSES, AND OTHER BUSINESSES WITH A POSTED POLICY REQUIRING FACE COVERINGS; PROVIDING EXCEPTIONS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, SUNSET, AND EXTENSION BY THE CITY MANAGER; AND PROVIDING FOR NON-CODIFICATION.

City Attorney Richardson reminded Council that the emergency ordinance would need to pass by a two-thirds vote.

City Clerk Hanscom read aloud the following four emails:

Sandra Hayes at sshayes76@gmail.com, urged Council to make an informed decision about wearing of masks. As a registered nurse, she understood the importance of wearing masks, which should not be worn any longer than 20 minutes because of saturation from moisture. She stated there were many unanswered questions about the actual epidemiology of the virus. She did not believe people should be questioned or shamed for not wearing a mask. She asked that Council not base their decision on fear.

Lianne March at liannemarch@gmail.com asked that Council uphold individual freedom and allow each person to be responsible for their own health decisions. She stated those who want to wear a mask should be fully supported. Those who do not wish to or cannot wear a mask should also be supported as basic freedom of choice. She stated many in the community could not wear a mask such as veterans with PTSD and those with asthma or breathing issues. She also stated that victims of rape who had their mouths covered during the attack may not be able to wear a mask. She stated that many argue that masks should be worn to protect others, but this makes many assumptions with disagreements amount the world's greatest scientists, doctors, and epidemiologists. She stated that mask wearing and improper handling of contaminated masks carry real risk. Since governing agencies will not accept responsibility for any potential harms that come from long-term mask wearing, they have no place requiring us to take on those risks against our better judgement. Where there is risk, there must be choice.

David Souders at davidlsouders@gmail.com wrote that he respectfully objected to wearing of masks in public spaces. He believed it should be up to the businesses to decide whether or not masks should be required. Those individuals comfortable with the risks associated with not wearing a mask should be able to express that right freely. He asked Council to allow citizens to freely provide their best judgement on whether or not it was necessary to wear a mask.

Mohamad Naas from mohamedjnaas@ymail.com wrote he had lived in Melbourne for 11 years and believed the self-centered nature of people declining to wear masks to reduce the spread of COVID was appalling. Masks should be mandated to keep cases

low and save the lives of the people of our city. Wear a mask, not for yourselves, but for your family, friends, neighbors, and fellow residents. He urged Council to vote in favor of the ordinance to protect the City.

Stephen Phrampus, 3401 Watergrass Street, stated that his brother is an emergency room physician and is now recovering from the COVID virus. He stated that he contracted the virus from a small business and not his employment. He did not believe the ordinance went far enough. Most of the businesses on the list were already requiring what the City was asking them to do. He believed other businesses, such as Wawa had as much foot traffic as Ace Hardware and it was in a smaller area. The ordinance could be broadened to mirror the mandate in Leon County.

Kayla Dernier, 2640 New York Street, Melbourne, provided a number of sources and journals which stated that masking did not reduce the risk of infection. She also provided sources which stated that cloth masks versus medical masks provided a small amount of protection and penetration was at 97 percent. Lastly, she stated that the Journal of American Medical Association which states that face masks should not be worn by healthy individuals to protect themselves from acquiring respiratory infections because there was no evidence that would protect them from becoming ill. She stated that this should be a personal choice and not a mandate.

Scott Sevel, 2698 Bradford Drive, stated that there were many statistics and some of them were old and did not apply. Dr. Fauci stated that face masks hinder germs from going through because they travel on the water droplets which cannot penetrate the masks. The last pandemic was the Spanish flu in 1918 and there was a resurgence of the disease which killed more people than the World War. He stated they need to protect the children when they go back to school. Sometimes government laws are there for the betterment of all people. It is an inconvenience but you could save a life. He stated that his sister died in four days and no one was able to attend the funeral. This City needs to take the lead because state and federal government are not doing what is right.

Mayor Rose closed the public forum portion.

Deputy Mayor Dittmore asked if nonessential businesses have the ability to use civil remedy. City Attorney Richardson stated that the ordinance could be rewritten to indicate that any business could be included if the face covering policy was in place for the business. He noted that the face covering policy for the nonessential businesses would need to mirror the policy in the ordinance. He stated that this would provide the opportunity for equal application. Deputy Mayor Dittmore stated that he agreed with the concern that some stores, such as Wawa should be mandated. He stated that there should be good public policy. He stated that governments do control public health. An example would be the restriction on smoking in restaurants. He stated that he reviewed many of the comments and that more than half of the comments were received from people that live outside of the area and should therefore not be considered as valid.

Deputy Mayor Dittmore moved to approve the ordinance with the amendment to allow any business to adopt a mask policy that can be enforced by civil citation. Council Member Batchelder seconded the motion.

Council Member Young stated that she had visited the managers of Lowes and Home Depot and found that they were not opposed to the ordinance. She also talked with people in the parking lot, both masked and unmasked, and found that no one was opposed. She stated she received the same type of comments at Target.

Council Member Smith stated she had been looking at information on this. She believed some people are confused that all people in West Melbourne would be required to wear a mask. It is not infringing on people's rights because there are other ways to get service from a business without going inside the store. Therefore, she did not believe it took away someone's rights. She asked about the opt-in measure. City Attorney Richardson stated a store owner can make the decision to require a face covering policy that matches our policy. The civil citation process would be available to that business owner and would save them from a confrontation. The Police Department will need to know which businesses have mirrored the City's policy.

Mayor Rose stated that we do not want this to be a way of making money. He asked Chief Wiley how it could be enforced without confrontation so that higher ranking officers can come out and try to smooth things out. He would prefer this be done without negativity. Chief Wiley stated that in most cases people need to be educated about the law. Most people leave on their own. He recommended that an enforcement affidavit be done for each store that opted to mirror the City's policy.

Mayor Rose asked how they would get the word out to businesses. City Attorney Richardson stated that staff would meet and brainstorm the best way to get business owners educated.

Council Member Bentley stated that it appears that the store owners want to have this in place and many store owners are already requiring. It allows the City to become the enforcer. He believed it would be a benefit to have the policy in place.

Council then voted on the motion to approve the amended Emergency Ordinance No. 2020-05, which passed 7-0 in a roll call vote.

6. ADJOURNMENT

There being no further discussions, the meeting adjourned at 8:14 p.m.