

**CITY OF PUNTA GORDA, FLORIDA
SPECIAL CITY COUNCIL MEETING MINUTES
WEDNESDAY, SEPTEMBER 30, 2020, 9:00 A.M.**

COUNCILMEMBERS PRESENT: Carey, Cummings, Matthews, Miller, Prafke

CITY EMPLOYEES PRESENT: Kristin Simeone, Finance; Rick Keeney, Public Works; Charles Pavlos, Utilities; Phil Wickstrom, Human Resources; Joan LeBeau, Urban Design; Pamela Davis, Police; Ray Briggs, Fire; City Attorney Levin; City Manager Murray; Outgoing City Manager Kunik; City Clerk Smith

Mayor Prafke called the meeting to order at 9:00 a.m., followed by the Pledge of Allegiance.

Mr. Greg Murray read into the record public comments received via email: Mses. Susan Brown, Faith Ferris, Carol Nasby, Sharon Gordon, Cindy Morell, Susan Cianbrand, Debby Daugherty, Libby Shafer, Linda Mitchell, Gloria Walker, Laurie Gedowi, Mary Yeomans, Dorothy Patterson, Carine Errett, Karen Steinfeld, Nancy Rice, Sheri Lenora and Messrs. Pete Gaylord, Ralph Cornell, Jeff Sweetland, Gary Skillicorn, Stewart Thompkins, Emile Cain, Tom Tierney, John Welsh, Steve Steinfeld and Albert and Jennifer DiCiara, Joy and David Smallbeck, Susan and James Kelley, Cheryl and Paul Monteyo, Russell and Doris Blair, Carl and Julie Parsons, Carol and Garrett Geiger, Mark and Dale Mayhorn, Louise and Peter LaGove and C.J. Hardy spoke in favor of retaining the mask mandate. Mses. Jaimie McKenna, Carla Walsh, Laurel O'Brien, Harriet Hazlet, Judy Scott, Mary Hines, Mary Tagliari, and Messrs. Dave Klingerman, John Murphy, Joe Voyles and Harris Boyd spoke against the mask requirement.

Mayor Prafke called for public comment.

Mses. Jessie Bennett and Kenley George spoke against the mask mandate.

NEW BUSINESS

Consideration of City's options relating to the Declared State of Emergency (COVID- 19) as a result of Florida Executive Order 20- 244.

City Manager Murray explained the City Attorney would provide a brief review of the Executive Order for clarity as well as options for City Council's consideration.

City Attorney Levin opined the Executive Order was not clearly written, and many City Attorneys across the State were trying to understand same. He reviewed several sections of the Order, noting several previous Orders had been modified for clarity and he hoped the Governor would resolve the ambiguity in 20-244. He stated as of this date the Florida League of Cities had not issued any guidance related to the latest Order. He stated from an academic perspective, it was clear the Governor had the

power to issue Orders that would suspend provisions of the Statutes, such as during hurricane emergencies or other natural disasters. He stated the City of Punta Gorda and other municipalities were given constitutional authority to adopt regulations under home rule powers, adding it was uncertain whether the governor had the authority to supersede those powers; thus, there was a question as to whether the provisions in section 4 of the Order applied to municipalities or only to statutes which may impose penalties related to COVID matters. He stated he expected the governor's intent was to restrict the ability of counties and municipalities to impose penalties for enforcement of orders that, in his opinion, would restrict or somehow minimize his desired reopening of the State.

City Manager Murray requested the City Attorney address that portion of the Order which repealed the previous Order with respect to crowds and the sizes of gatherings. City Attorney Levin explained Order 20-139 minimized the size of crowds to a maximum of 50 people, noting 20-244 superseded same; thus, there was no longer any Order limiting the size of crowds. He then offered six options for consideration: 1) do nothing, noting emergency ordinance 1944-2020 expired November 6, 2020 and could be retained but without enforcement; however, the alternative was to enforce the existing ordinance with the potential for a legal challenge; 2) continue to enforce the emergency ordinance and extend it beyond November 6, 2020; 3) adopt emergency ordinance provided this date which repealed ordinance 1944-2020 4) adopt resolution provided this date which made masks optional; 5) adopt a resolution similar to Charlotte County wherein mask wearing was mandatory but with no enforcement provisions; 6) after a decision was made with respect to options 1 through 5, the City had the authority to limit capacity within City owned property and establish rules which controlled what happened on City property. He stated it was uncertain if mask provisions could be enforced with penalties or fines; however, the City could make the wearing of masks a condition to entering City owned property. He stated if someone refused to wear a mask upon request and without having a legitimate exemption, that person could be asked to leave the premises and if they failed to do so, that person could be trespassed, which was a different enforcement mechanism than that which was suspended in Order 20-244.

Councilmember Matthews confirmed the City had issued no citations to date.

City Attorney Levin stated he had offered his opinion regarding the enforceability of the Governor's Order relating to the suspension of the City's enforcement mechanisms should the City want to adopt language that was enforceable, adding he was not recommending same since it was more than likely it would result in some form of

litigation and there was no clear precedent; thus, he was unable to say with any degree of confidence what the likelihood of success would be on such a challenge, which in all likelihood would probably end up before the Florida Supreme Court.

Councilmember Miller noted the City had previously adopted certain portions of previous Orders, inquiring whether that could be done at this time.

Mayor Prafke inquired members would consider doing nothing as an option.

Councilmember Matthews inquired if the ordinance had to be amended to do nothing.

City Attorney Levin replied City Council could place a moratorium on certain provisions of the ordinance.

Councilmember Cummings suggested adopting the resolution to be consistent with Charlotte County, opining there was no statistical difference between the City and County.

City Attorney Levin advised the City's proposed resolution was not a mandatory resolution similar to the County, adding if City Council wanted to adopt something similar to the County, the City could retain the current ordinance without enforcement.

Councilmember Carey pointed out the County was not faced with parades, festivals and a large influx of tourists, voicing concern the City needed to make a strong statement that masks were important.

Councilmember Matthews concurred. She stated many residents wanted the mandate to remain in place even without enforcement. She stressed it was City Council's duty to protect residents, opining the virus was not going away anytime soon.

Councilmember Miller stated the City's methodology to date had been the ordinance but with education versus fines, adding if the current ordinance was retained, the City would continue to do what had already been done.

City Attorney Levin clarified if the City enforced the ordinance, there was a possibility someone would challenge same in light of the latest Order.

Mayor Prafke stated some residents had expressed a preference to adopt the resolution as there was the perception that it gave people more options and freedom.

City Attorney Levin pointed out a resolution was not enforceable because it was not law, adding there was no enforcement provision in the County's resolution. He stated if City Council did nothing at this time, the City could continue to issue warnings and use the ordinance as an educational opportunity, adding when education failed, there was also the option of enforcement, but running the risk that a court may overturn the enforceability of the penalties.

Councilmember Carey stated the City's desire to keep people safe was not fed by punitive actions and the collection of fines; however, she was concerned if mask wearing was made optional, infection rates would increase quickly.

Councilmember Cummings opined residents were responsible and mature people who knew the risks involved and could make decisions to protect our health, adding by now everyone was aware of the seriousness of the situation. He stated a strongly worded resolution would express Council's intention of keeping people safe; however, people had to take personal responsibility to be safe because ultimately it was their decision as to whether they complied.

Councilmember Carey stated many people felt safer going out again knowing people were required to wear masks. She stated she did not frequent establishments which did not enforce the requirement, which was her personal choice.

Mayor Profke interjected some establishments were not enforcing the wearing of masks despite the City's ordinance, and people could choose whether to patronize those businesses. She stated she entered many places in the County where she noticed people wearing masks and she had not felt that much difference in whether she was going into a County versus a City establishment.

Councilmember Matthews noted all the national box stores had mask mandates, clarifying this was being dealt with on a national level not just at the City level. She stated the City was not out of line to retain the mandate without enforcement, adding this was the right thing to do for right now. She stated this was for the benefit of local businesses kept people safe, voicing concern regarding loss of the momentum that had been built up over the past three months.

Mayor Profke reiterated the City could put a moratorium on section 6 of the City's existing ordinance.

City Attorney Levin stated it was possible another Order would be issued modifying or eliminating the suspension of fines. He stated at that point in time, the ordinance would be in place and City Council could simply lift the moratorium. He stated if there should be a spike in cases or deaths, regardless of whether the governor modified the Order, City Council might feel it was in the best interests of the citizens to begin enforcement if education was not sufficient, adding in that case, the mechanism would already be in place. He stated leaving the existing ordinance in place made the most sense if City Council desired something that was mandatory as opposed to the permissive resolution.

Discussion ensued regarding retaining the existing ordinance with a moratorium on the enforcement provision.

Councilmember Carey suggested people needed to be educated on the State's requirements versus the requirements of the City's ordinance, noting there were still mandates in place for certain industries.

Councilmember Matthews **MOVED** approval of retaining the existing emergency ordinance 1944-2020 in place with a moratorium on enforcement of Section 6, **SECONDED** by Councilmember Cummings.

MOTION UNANIMOUSLY CARRIED.

Councilmember Miller suggested an explanation be included in the Weekly Highlights Report.

Mayor Prafke drew members' attention to the list of events currently requested.

Ms. Lisa Hannon, Zoning Official, reviewed the list, highlighting recent submissions which included the Lighting of the Village and a drive-through trunk-or-treat, noting the Vietnam Veterans organization had withdrawn their application for a parade. She stated the organizers of the farmers markets had asked whether they could operate at full capacity and the Women's Club had requested an event. She briefly reviewed additional requests she had received, noting permits had been issued for a drive-in movie and the historic walk. She stated the large wedding event on New Year's Eve had been postponed until 2022. She stated NY Promotions had inquired about holding events and had offered to change the event set up to allow for more social distancing. She inquired as to City Council direction.

City Manager Murray inquired as to a timeframe for an event permit.

Ms. Hannon replied applications were required to be submitted 60 to 90 days in advance, depending upon the complexity of the event.

City Attorney Levin stated Section 1 of the Governor's Order expressly superseded and eliminated all restrictions related to crowd size, noting the City's ordinance did not address crowd size and only regulated indoor activities. He advised City Council could impose by policy limitations on crowd sizes with respect to both indoor and outdoor facilities controlled by the City. He stated it might require some type of resolution to regulate crowds on property that was private in nature.

Councilmember Matthews inquired as to a homecoming parade.

Ms. Hannon responded with uncertainty; however, she agreed to reach out to the event organizer.

Councilmember Matthews stated the Punta Gorda Chamber would like to move forward with the Sullivan Street Craft Fair.

Ms. Hannon stated Mr. Wright had forwarded American Craft Endeavors' list of rules for guests and vendors which they intended to impose if allowed to hold the event.

City Attorney Levin advised the street was a City controlled property; thus, City Council had the authority to decide whether to issue a permit and impose restrictions to protect the public health and safety if there were concerns regarding crowd size.

City Manager Murray noted the Executive Order specified it did not preempt or supersede a non-COVID 19 municipal or county ordinance.

Councilmember Matthews inquired as to plans for the Lighting of the Village.

Ms. Patti Allen, Fishermen's Village, explained the ceremony for the lighting had been cancelled; however, the lights would be on and the Festival of Lights would be held with entertainment, no announcement would be made regarding the date the lights would be turned on.

Councilmember Matthews opined the Governor's Order precluded the City from preventing a business from making money; thus, the City could not withhold event permits. She suggested requiring permit applicants to provide a plan for social distancing and for keeping people safe for events with a certain number of people, including parades.

Ms. Hannon stated park rentals had been limited to 50 people; however, that limitation would be removed.

City Attorney Levin clarified Section 2 of the Order stated no COVID-19 emergency ordinance can prevent an individual from working or from operating a business. He stated the City's policy with respect to the issuance of permits for events was not part of the emergency ordinance; thus the Order did not preempt City Council's ability to protect the public health, safety and welfare with respect to gatherings to the extent that you have the authority to control the size of gatherings be it in public space or publicly controlled space. He stated the permit system was intended to make sure that adequate provisions are provided by event organizers for the protection of the public who would be attending their event. He stated the City routinely imposed requirements based on the size of the event, concluding it was not beyond the realm of the City's legal authority to require the organizer to address the City's concerns regarding social distancing.

Ms. Hannon inquired if the City Attorney was referring only to City controlled property since most of the event permits were on private property. She stated the City's event application specified that any event that was open to the public, even on private property required an event permit so the City could monitor same for public health, safety and welfare issues.

Mayor Prafke stated if that was the case, the City had the authority to require the requestor to document how they would provide for public safety.

City Attorney Levin agreed, opining it was not an unreasonable extension of the City's authority.

Councilmember Matthews **MOVED** approval of commencing the issuance of event permits provided the event organizer worked with City staff to ensure there was a plan in place for public safety and health regulations, **SECONDED** by Councilmember Miller.

MOTION UNANIMOUSLY CARRIED.

City Attorney Levin suggested the words "public safety and health" were sufficient without using the word "regulation," which might cause confusion. He suggested using "address public safety and health concerns."

Councilmember Matthews **MOVED** to amend the motion to replace "for public safety and health regulations" with the verbiage "to address public safety and health concerns", **SECONDED** by Councilmember Miller.

MOTION UNANIMOUSLY CARRIED.

Ms. Hannon inquired as to the farmers markets.

Discussion ensued with consensus the markets must provide a plan for public safety.

Councilmember Miller inquired if the church service being held in the park was limited to 50 people.

Ms. Hannon reiterated the recent Order lifted crowd size restrictions; therefore, park rentals would have no attendance restrictions.

City Manager Murray stated there might be other ramifications, citing City Hall Council Chambers as an example where more seats could be made available to allow more people to attend the Council meetings. He stated it might be appropriate to discontinue accepting public comments via email and reading them into the record at the meeting.

Mayor Prafke opined City Council should set the standard, adding she would not like to see things relax too much in Chambers. She stated until that was possible, it may be necessary to continue to read the emails.

Councilmembers Carey and **Matthews** concurred.

City Attorney Levin then advised City Council could approve a resolution extending the existing ordinance for more than 30 days at a time.

Adoption of Emergency Ordinance repealing Emergency Ordinance 1944- 2020.

No discussion.

Adoption of Resolution relating to Face Coverings.

No discussion.

Ms. Allen stated the City had provided businesses with a copy of the ordinance, questioning if the ordinance would be amended and redistributed.

City Attorney Levin replied in the negative. He noted the Governor's Order suspended the collection of fines which suggested that suspension might be lifted at some point in time, which added credibility to the action that was taken to suspend the enforcement of Section 6.

Discussion ensued with consensus to include information for businesses in the City's regular communications media.

The meeting was adjourned at 10:56 a.m.

Mayor

City Clerk