

MINUTES

REGULAR MEETING – CITY COMMISSION

June 26, 2020

Minutes of the Special Emergency Meeting of the City Commission of The City of Daytona Beach, Florida, held on Tuesday, June 26, 2020 at 4:00 p.m., in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

2. Roll Call.

Commissioner Ruth Trager	Present
Commissioner Aaron Delgado	Present
Commissioner Quanita May	Present
Commissioner Robert Gilliland	Present
Commissioner Dannette Henry	Present
Commissioner Paula Reed	Present
Mayor Derrick L. Henry	Present

Also Present:

Bettye Goodman, Assistant City Manager  
Benjamin Gross, Deputy City Attorney  
Allyson Brown, Assistant City Clerk

3. Adopted/Resolution No. 2020-165 A RESOLUTION REQUIRING FACE COVERINGS AT ALL INDOOR LOCATIONS THROUGHOUT THE CITY IN ORDER TO MINIMIZE SPREAD OF THE COVID-19 VIRUS, SUBJECT TO CERTAIN EXCEPTIONS; REVISING EXCEPTIONS TO PREVIOUSLY-APPROVED REGULATION OF FACE COVERINGS IN CITY BUILDINGS, FOR CONSISTENCY WITH THIS RESOLUTION; PROVIDING FOR APPLICABILITY; PROVIDING EFFECTIVE DATE AND FOR EXPIRATION; RATIFYING MAYOR HENRY'S EXECUTIVE ORDER NO. 9 AND EXTENDING LOCAL STATE OF EMERGENCY THROUGH 11:59 P.M., JULY 1, 2020; AND PROVIDING AN EFFECTIVE DATE.

Dru Driscoll, Deputy City Manager, stated he would present publicly accessible data the fundamental body of the proposed resolution. The Department of Business and Professional Regulation released emergency order 2020-19 under the authority granted to them by Governor DeSantis which states all vendors licensed to sell alcoholic beverages for consumption on premises who arrive or derive more than 50 percent of gross revenue from sales of alcoholic beverages shall suspend the sale of alcohol beverages for consumption on premises. This emergency order went into effect today. He just wanted to provide the public with that information. He stated for today's COVID update the data was provided by the Florida Department of Health, the Florida Agency of Health Care Administration, and the Florida Division of Emergency Management. Volusia County total cases are 1605. 23 percent of those cases between June 10th and June 23rd were asymptomatic in nature. There are 10 COVID patients on ventilators, 15 in ICU, and 42 patients in other hospital beds. 178 cases that make up 11 percent of the positive cases totaling 34 deaths. In Volusia County there are 319 beds available; that's 23 percent of capacity and there are 33 ICU beds available which in 16 percent of the available capacity. Within Volusia County they have tested 36,339 individuals for a current positivity rate of 4.4 percent.

On June 16th, in the State of Florida, the positivity rate was 5.4 percent. Today, June 26th, they had a 6.9 percent positivity rate within Florida. He stated they are seeing an increase of positivity in lower aged groups. He stated the median age of positives in Volusia County is 46 years of age. We continue to trend for lower aged persons. 50 persons older than 60 years of age have passed. One in the 50-59 range and two within the 30-49 range.

Commissioner Delgado asked if there was information on their underlying health issues.

Chief Driscoll stated within the Florida Department of Health dashboard you can see reasons why people are being admitted to the hospital. It does not speak to preexisting health issue. He went to the next slide and stated that a case is a person, so if they test multiple times it still only counts as one. The next slide is the Volusia County cases.

Commissioner May clarified that they are trending close to the State.

Chief Driscoll stated he would agree to that. He stated the next slide is the distribution.

Commissioner Delgado asked if this was based on the zip code of where the person lived.

Chief Driscoll stated yes including correctional institutions and long-term care.

Commissioner Delgado asked if someone was in the correctional institution here but resided somewhere else if they would be counted in Volusia's numbers.

Chief Driscoll stated they would be in Volusia's numbers. He stated that concludes the data portion of the presentation.

Commissioner May clarified even without the prison they are trending closer to the State levels.

Chief Driscoll stated yes. He stated the next item is the proposed Resolution. He read Sections of the Resolution. He clarified the mask requirement is for all indoor facilities when one is not able to maintain a six-foot distance. There are exceptions included in this Resolution. He stated this Resolution would go into effect on June 28, 2020.

Mayor Henry shared a letter he received from the Volusia County Medical Society Executive Committee and their support of strong mask mandates for indoors and outdoors.

Doctor Klioze, thanked Mayor Henry. She stated the concern they have in the increased number of active cases in hospitals and the rise of younger cases. They have data showing wearing a two-layer face mask covering can help decrease the spread of the virus. She stated the hope is that by wearing the face coverings they can avoid complete closure again. Since the outbreak and they have seen more stroke and infectious disease outcomes than previously. This includes the decrease in access to care. Masks will help people feel safer going to work, school, and businesses. They don't want a community that shames people into wearing masks, but to have a community that works together to have a healthier community.

Mayor Henry opened the floor to the Commission.

Commissioner May asked how she felt about wearing masks outdoor.

Dr. Klioze stated it is mostly inside they see the transmission of the virus.

Commissioner Gilliland asked about issues with prolonged wearing of masks.

Dr. Klioze stated when someone suffers from lung disease, they need to be more conscientious but taking a break outside, in a closed office or in the bathroom from wearing a mask, hasn't been an issue. The reality is they are not trying to create a hostile environment, but to protect everyone. If they continue to not wear masks in public spaces, they are never going to slow down the transmission and the alternative of shutting the cities down again is not good for the economy or for anyone. They need to do the best they can with what they have.

Commissioner Reed thanked her for coming and her presentation.

Dr. Klioze stated their concerns arose from the levels they had seen in the hospitals. They want to flatten that curve before it escalates. The limits of a mask are much better than a shutdown.

Commissioner Henry asked how many members are represented in their organization.

Dr. Klioze stated 325 and the executive committee is a total of 16.

Mayor Henry stated they represent a diverse background of physicians in this community.

Commissioner Trager stated they are in a unique situation and it is very contagious, and it is very worrying to her. There is no vaccine and they are learning as they go along and the least, they can do is wear a mask.

Mayor Henry thanked Dr. Klioze. He stated this a polarizing issue, that shouldn't be. He stated in a best-case scenario this would be a decision from our Governor or our County. They are not there yet, and neither are the neighboring municipalities. He stated that Daytona Beach is different than those cities. On any given day their population is two and half times more than the residents that live here. He stated nobody wants to start closing things down. They need to consider something, and they don't have a lot of tools in the toolbox to address this problem. They know they don't see residents and visitors wearing masks as often as they should. He has heard, literally, from thousands of seniors asking for people to wear masks. He stated they had an economy that was booming before COVID, but unless they do something to help slow the spread, their economy will never experience the recovery that they all hope for. He stated there are people in the community that don't feel safe enough to return to the marketplace as they did before until they feel a greater sense of safety. They don't feel safe when they go out and see young people out without masks on.

Assistant City Clerk, Allyson Brown, read an online public into the record stating that the individual supported a mask resolution.

John Nicholson, 413 N. Grandview Avenue, Daytona Beach, stated he didn't know whether or not this was necessary or not. He feels there is not enough information. He didn't know how they were going to enforce it.

Sherrise Boyd stated she didn't support mandating wearing masks.

Thomas Copeland, Derbyshire, Daytona Beach, stated he supports the effort to be safer as a community, but he does not support a mask mandate.

Commissioner Gilliland stated they should talk about how they would enforce the mandate.

Benjamin Gross, Deputy City Attorney, stated the Resolution is silent on violations. It is being adopted under the State of Emergency and Florida Statutes Chapter 252. Enforcement is authorized under the Florida Statute by police and the penalty under the chapter would be a second-degree misdemeanor.

Commissioner May under this Resolution can a business say they would like their shoppers to wear a mask upon entry of the store.

Mr. Gross stated yes, although he pointed out one of the exceptions to the rule, if they are observing social distancing, they aren't required to wear one. He clarified a store however could state that a patron must wear a mask regardless of social distancing.

Commissioner Gilliland stated that businesses can mandate the use of masks today without this Resolution.

Mr. Gross stated yes.

Mayor Henry stated he had received correspondence from a hotel, encouraging the mandate, so they would have further authority.

Commissioner May stated she asked hotels in her area and they have already ordered masks to give out to the guests. She stated they hotel/motel associations were expecting this and have prepared.

Commissioner Trager stated there are lots of rules and regulations that they don't like but still follow. She gave seatbelts as an example. She doesn't like them, but it's the law and she wears them.

Commissioner Delgado stated he couldn't agree more. He has seen many young people congregating and not wearing masks. He felt it should have been done on State level, but since they are not, he is glad they are doing something. He asked about the definition of companion in the Resolution. He wondered if the City can help make masks available to businesses. He doesn't feel asking people to wear a mask presents a financial hardship or a privacy issue.

Mr. Gross answered Commissioner Delgado's question and gave an example of a group sitting at a table. Mr. Gross stated that social distancing isn't defined in the Resolution and they could define it. Commissioner Delgado stated he proposes the updated CDC guideline and define social distancing in the Resolution.

Commissioner May stated given all the exceptions in this Resolution, what is left.

Commissioner Gilliland stated he will not be supporting this Resolution because he doesn't think it is going to accomplish anything.

Mayor Henry stated he doesn't agree they need to define social distancing because the goal is to get people to wear masks. The issue is that masks work. He is not in favor of adding that language. He stated he wants to tell businesses they can require masks and put up signs that say a mask is required. He stated at the end of the day we expect citizens to wear masks.

Commissioner Gilliland asked if the Mayor would want to go behind the CDC guidelines.

Commissioner Henry stated maybe they should.

Commissioner Gilliland stated the reason they are seeing the spike is because people aren't listening to the current guidelines about social distancing and gathering, and handwashing. He stated that is the problem.

Commissioner May asked how he proposed them become strict on washing hands and social distancing.

Commissioner Gilliland stated the Governor took a big step and closed the bars.

Commissioner May stated that is not the only business issue. The things that he is suggesting; hand washing, and distancing are cheap, and people are still not abiding by them. She feels they are taking additional steps to try to break the chain of transmission because the first two aren't working. She stated if just a percentage of people agree to this, it could change their results.

Commissioner Gilliland stated they need to figure out how to get people to abide by the Governor's order. People wouldn't listen in the bars, so the Governor shut them down. He stated he doesn't believe they will see a Statewide mask mandate out of the Governor.

Commissioner May clarified that he felt taking something away, like they did with the bars, is the way to go.

Commissioner Gilliland stated she was talking about a \$500 fine and 60 days in jail.

Commissioner May stated they are doing this in hope that the businesses that people are frequenting...this is for the business community because hopefully more people will come out and shop if they see the clerks are wearing masks, and other customers are wearing masks. She stated that is part of the intent.

Commissioner Gilliland stated that is what we all want, for people to feel safe coming out.

Mayor Henry stated they want to send a message to the community that they need to wear masks. He certainly doesn't want to see officers at stores making sure people wear masks, but at the end of the day they want to see a change in behavior and if they don't then they need to go to the next step. He stated they have to wear masks. Across the Country the places where masks are compulsory are doing better than the places they are not. He stated it is not just the bars and our community are different because we attract tourists and they need to say if you come here you have to wear a mask.

Mr. Gross stated this Resolution would not be infringing on any one's constitutional rights. He gave them an analogy that it is illegal in the State of Florida to not use a turn signal whether or not someone is behind you or not. In theory for you can be given a ticket regardless if someone is behind you or not. The law says that one has to use turn signals, and the reason for that is to correct good habits and he thinks that is what the Commission is trying to do here. One thing they might want to consider doing, one jurisdiction had in their Resolution that they weren't going to incarcerate anyone. Another jurisdiction had a sliding scale for penalties.

Commissioner May asked him what the penalty was right now.

Mr. Gross stated the penalty is up to 60 days in jail or a \$500 fine. They could voluntarily add language to downgrade that.

Commissioner Delgado asked if they could do it by number of violations; first violation a \$50 fine, second violation a \$100, etc.

Mr. Gross stated yes, they have that flexibility.

Commissioner Henry stated her concern with enforcing this with homeless population.

Mayor Henry stated he would ask staff to address that at the next Commission meeting.

Commissioner Gilliland understands that this will probably pass tonight, but he wants them to consider the OSHA standards on masks as well.

Commissioner Reed stated she likes the sliding scale suggestion.

Commissioner Delgado suggested the first time be a warning only and give people one or two chances. He asked if they could have masks to distribute at City facilities.

Chief Driscoll stated that they do already provide masks at City facilities for those that arrive without them. He will get with the Volusia/Flagler Continuum of Care to see what efforts are already being done in the homeless populations.

Commissioner Delgado stated he was asking if individuals didn't have or want to buy masks if they could just get them from the City and go about their business.

Chief Driscoll stated they are preserving medical grade masks for essential persons. Otherwise it will be a conversation.

Commissioner Delgado believes the City should make masks available to the community at the City's expense. He doesn't believe a mask would be a financial hardship for an individual however, if they are going to mandate masks, they should have a way to provide them to the Community and give the businesses masks.

Chief Driscoll stated the Volusia County Department of Health is providing free masks from 8:00 a.m. to 5:00 p.m. at their Keech Street and Holsonback locations, both within the City. These are cloth masks.

Commissioner May asked about enforcement and the recourse for the business.

Mr. Gross stated Chief Capri could address the issue, stated ultimately these are enforced judicially.

Commissioner Gilliland clarified that a store, being a private entity, can have a mask police and ask anyone that doesn't follow those rules to leave and if they refuse to leave, they can be trespassed.

Mr. Gross stated correct.

Commissioner Gilliland stated that is available today. This really does nothing for private businesses. They can already just ask people to leave.

Commissioner Henry questioned whether it would too hard to start out with warnings. She wanted to know how they would clock that and whether that would be overburdensome for their officers. She feels just starting with a simple \$25 fine lets people know that they are serious about people wearing masks.

Commissioner Delgado described what they were doing at his place of business. He stated the reason he brought up a warning, that in case of a visitor or a tourist. Officers always have the discretion to give warnings. He stated there are a lot of businesses that will donate masks.

Commissioner May stated she supports the aspirational value of wanting people to choose to wear a mask willing. The issue she is having is that an ordinance without enforcement doesn't work for her. She stated she wants people to do it willing, including visitors.

Mayor Henry asked what they expect of businesses.

Mr. Gross stated the Resolution is written to make it a violation if an individual is not wearing a mask. Mayor Henry clarified that it is an individual thing and a business could allow people to come in without a mask on if they so choose.

Commissioner May stated she believes that businesses are in such dire need that they aren't going to turn a customer away.

Mr. Gross stated that one reason they might turn a customer away is the economic value that Mayor Henry was referring, where people don't believe a business is enforcing social distancing, they are going to avoid that business. Some businesses may be able to use the City as "the bad guy" to get people to come into compliance.

Mayor Henry stated he does believe some businesses will sell it, that the City is holding them accountable. He stated they have to say this is a value that they have in this City.

Commissioner Delgado asked if they could make the businesses and their employees wear the masks if they can't social distance. He stated that would hard to enforce.

Mr. Gross pointed out the Resolution is on anyone that is in an indoor space, except certain exemptions. He listed some of those exemptions.

Commissioner May still had questions about enforcement.

Mr. Gross stated they adopted at the last meeting a document that strongly recommends the wearing of face masks in public.

Commissioner May stated that people weren't doing that.

Commissioner Gilliland stated there was no evidence that not wearing face masks increased the number of cases.

Mr. Gross went over all the changes that were going to be included in the Resolution.

Mayor Henry if everyone agreed on the first offense being warning.

Craig Capri, Chief of Police, stated this is the first he is learning of the Resolution and he felt as the Police Chief he should have had some input because it is coming back to them. He asked the attorney if they have talked to the State Attorney if they were going to prosecute these charges.

Mr. Gross stated he had not, and he knows that he had mentioned at a previous meeting how difficult it is to get the prosecuted.

Chief Capri stated they are not being taken to jail, and they won't prosecute these. He stated there is a likelihood that the judges will reprimand the officers for bringing these types of cases forward. He stated they are putting officers in harm's way...

Mayor Henry stated they don't need a judge for these civil violations.

Chief Capri stated there are criminals' charges in this Resolution.

Commissioner Henry asked how much of burden would it be for officers to start with a warning and to keep track of that.

Chief Capri it would be difficult. He has seen already businesses turning people away because they won't wear a mask. He stated his concern is in the enforcement of this is they ask someone to wear a mask or leave and the person refuses and then the situation escalates and they are left out there hanging over something they never had an input in.

Mayor Henry stated they need to have a plan in place that says what are the rules.

Chief Capri stated he has heard other cities are hitting people with fines and he wondered how that was working in those communities. He does know the outcome of this cases.

Mr. Gross stated they could get together with the police department. He stated Chief Capri did have a copy of an executive order that did morph into this Resolution, but they worked on it over a short timeframe.

Chief Capri stated the problem is that his officers are the ones that are going to have to be out there dealing with it, not the City Attorney's office. He stated they fight everyday to keep their relationships in the community good and everything going on in the country and people are going to be up at arms and furious. He feels people will be associating this with the police and saying they are overstepping their bounds.

Mayor Henry stated he understands that, but this body wants masks in Daytona Beach.

Commissioner Gilliland stated why don't they have a period where it is just going to be warnings and during that time the decision could be made to the scale.

Mayor Henry agreed.

Commissioner Reed and Commissioner Delgado stated that was a good idea.

Mayor Henry stated they need to start a positive campaign and working to educate the public. He stated he doesn't like wearing a mask either, but he listed all the reasons why he wears a mask, protecting others.

Commissioner Gilliland recommended coming back the second meeting in July to amend the Resolution to add the scale. That gives them time to address it.

Mr. Gross stated they will work with the PD on the scale.

Commissioner May stated she wants to see how the other cities are doing it.

It was moved by Commissioner Delgado to adopt the Resolution as amended. Seconded by Commissioner Trager. The Resolution was adopted 6-to-1 with the breakdown as follows:

Commissioner Trager	Yea
Commissioner Delgado	Yea
Commissioner May	Yea
Commissioner Gilliland	Nay
Commissioner Henry	Yea
Commissioner Reed	Yea
Mayor Henry	Yea

Commissioner Gilliland asked about extending the construction permits incentive for another 30 to 60 days on Wednesday.

Mayor Henry stated he would be in favor of 30 days.

4. ADJOURNMENT

There being no further discussion or comments the meeting was adjourned at 5:48 p.m.

  
DERRICK L. HENRY  
Mayor

ATTEST:

  
ALLYSON BROWN  
Assistant City Clerk

Adopted: March 3, 2021

**RECORD REQUIRED TO APPEAL:** In accordance with Florida Statute 286.0105 if you should decide to appeal any decision the Commission makes about any matter at this meeting, you will need a record of the proceedings. You are responsible for providing this record. You may hire a court reporter to make a verbatim transcript, or you may purchase a CD of the meeting at the City Clerk's office. Copies of CDs are only made upon request. The City is not responsible for any mechanical failure of the recording equipment.