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PROVO MUNICIPAL COUNCIL

Regular Meeting Minutes

5:30 PM, Tuesday, August 25, 2020

Electronic meeting: youtube.com/provocitycouncil

Roll Call (0:00:00)

THE FOLLOWING ELECTED OFFICIALS PARTICIPATED IN THE MEETING:

Council Chair George Handley, conducting	Councilor Bill Fillmore
Council Vice-chair David Harding	Councilor Shannon Ellsworth
Councilor Travis Hoban	Councilor David Sewell
Councilor David Shipley	Mayor Michelle Kaufusi

Opening Ceremony

Prayer

Councilor Shannon Ellsworth offered the prayer.

Pledge of Allegiance

Cliff Strachan, Council Executive Director, said the Pledge of Allegiance.

Action Agenda

1. Consideration of an ordinance related to COVID-19 pandemic responses, including face coverings and public gatherings. (20-118)

Cliff Strachan, Council Executive Director, outlined how public comment would work during the meeting. Brian Jones, Council Attorney, shared the latest version of the ordinance proposal, which was essentially an amalgamation of Summit, Grand, and Salt Lake Counties' mandates.

Mr. Jones invited questions and comments from Councilors. Their remarks included:

- Councilor Travis Hoban asked about exemptions for family groups; Mr. Jones indicated that there was not currently an exemption.
- Councilor George Handley noted some distinctions between a large store, which might have more than 50 customers inside, versus a retail store holding an event specifically. Mr. Handley also commented on the guidelines for people from different households.
- Councilor Shannon Ellsworth asked what other communities have done regarding signs and whether they have provided a template.
- Mr. Hoban asked about the fines. Mr. Jones said that the \$500 fine was only for organizers of large gatherings; others were only subject to a \$55 fine.

Mr. Jones noted that this was the time for Councilors to seek clarification before the public comment period. Following public comments, the Council discussion should be focused on

debate of the ordinance's actual text and principles. Council Chair George Handley noted several issues which Councilors had raised and which they could resume a discussion of following the public comments, including family units and signage. Several Councilors noted that existing guidelines already addressed households and families. Mr. Jones explained that the state granted the Council police powers to enact ordinances that promoted the health and safety of the city.

Mr. Strachan shared an overview of the Open City Hall topic results and responses. He noted that this was not a scientific survey; rather, this was another method for gathering public input. Similar to the Council's receipt of emails, phone calls, and comments in public meetings, this was simply another method by which the public could share feedback and input on a particulate proposal. He noted that the public comment portion of the meeting that evening would be limited to 15 minutes, as the Council had received extensive public comments at the previous meeting. Mr. Strachan noted the additional responses received to the topic over the weekend and he summarized the types of comments and responses received.

Public Comment

- Kevin McCluskey, Salt Lake City, UT, was a hockey player for the Provo River Blades. He was against a mandate and thought citizens should be able to make their own decisions and keep community facilities open.
- Aaron Davidson, American Fork, UT, worked in Provo and thought this mandate was akin to communism and it took away liberties and freedoms. He also thought that not wearing a mask was better than improperly wearing a mask and causing contamination.
- Blake Tierney, Provo, noted that the federal government has let states and governors decide how to handle the pandemic locally. Likewise, Governor Gary Herbert has let local municipalities in Utah decide how to approach the pandemic—this was absolutely the Council's prerogative to consider such a measure as a mask mandate. 73% of Provo residents who responded to the survey supported a mask mandate. He felt there was no doubt that a mask mandate would save lives.
- Mae Ling John, Provo, was a college student in Provo. Although we have rights as citizens, we also have a responsibility to society and ultimately peoples' lives are more important than social gatherings. She hoped the Council would pass a mandate, as it would undoubtedly save lives. The CDC and World Health Organization have recommended mask-wearing and she saw it as a way to be of service to the community. Selfishness should not be the motivating factor against a mandate; if the mask mandate saved even one person, that would be enough.
- Jared Curtis, Provo, was against a mandate. He did not think there were significant risks of the incoming student population overrunning the hospital capacity. He thought that higher spread of the disease did not necessarily mean more deaths; he said a lot of people who had died of COVID-19 had comorbidities or were elderly. He thought the elderly and people with comorbidities should stay home and that the community should reach herd immunity among healthy individuals.
- Richard Jaussi, Provo, supported any efforts in the community to entice people to wear masks so that BYU Football could still allow fans to participate.
- Trevor Hall, Provo, was a UVU student and against a mask mandate. He thought enforcement was problematic and that the mandate couldn't really be enforced.

Council Chair George Handley offered clarification on a few items. He noted that this ordinance would not ban public gatherings; rather, the ordinance would require compliance with health guidelines precisely so gatherings could take place safely (and similarly so that businesses and athletic events could operate safely). In response to a question from Councilor David Harding, Mr. Jones explained that the current draft ordinance applied to outdoor events only where social distancing was not possible, reasonable, or prudent. For indoor events, if a gathering of 50 or more people was taking place, masks must be worn even if social distancing was possible. This did not prohibit the gathering from taking place; Mr. Jones noted similarities between how many church congregations were currently meeting—they were typically requiring masks even though social distancing was also being practiced. Mr. Jones also clarified the differences between a civil infraction and fine for organizers or individuals.

Motion: David Sewell moved to incorporate an additional exemption for household groups. Seconded by George Handley.

Vote: Approved 7:0.

Motion: Shannon Ellsworth moved to remove lines 204-205 from Section 9.25.050(2). Seconded by Bill Fillmore.

Councilors briefly discussed the implications for removing this provision. To the degree that the City could help by providing a signage template, in order to promote uniformity and clarity on the message, and eliminate design burdens for local businesses, Councilors were supportive.

Vote: Approved 7:0.

Councilor Travis Hoban thanked the Council and staff for their countless hours and efforts. He shared that his dissenting view simply arose from concerns about the process by which the Council has arrived at this ordinance; he thought masks were effective and action of some kind was needed, but he had concerns about the rollout of the proposal. He was also concerned about the lack of support from the City Administration; he would prefer to spend more time in order to build consensus and obtain better information from community partners.

Council Chair George Handley shared some clarifications on the studies shared by BYU researchers Ben Abbott and Chantel Sloan; he noted that passing a mask ordinance was a base assumption of Dr. Sloan's modeling and metrics. Mr. Handley implored the community to treat each other with kindness and respect, during a situation which had created understandable fear and frustration. Mr. Handley highlighted the danger of misinformation in the community discourse. He affirmed the direction from public health experts regarding the efficacy of masks and the severity of COVID-19 beyond that of the common flu. A mask mandate was a significant precaution the Council could take to help ensure that BYU and businesses in Provo could continue to operate and remain open during the pandemic. Furthermore, the uniformity of the ordinance helped protect businesses. Mr. Handley called on the Council to pass this ordinance and he plead with the City Administration to put it into effect as soon as they could.

Motion: George Handley moved to pass the ordinance as amended. *No second received. Mr. Handley later withdrew this motion.*

Councilor Bill Fillmore expressed that he felt a need to support institutions in the city which had put comparable protections into place. He hoped a mask ordinance could better help protect everyone. He asked whether Councilor Travis Hoban had any suggestions with respect to a sunset provision. Councilor David Sewell also noted some other issues he hoped the Council could address. Mr. Jones noted that there was already an implied motion, but that a Councilor could make a motion to vote on the ordinance sooner. Mr. Handley withdrew his motion as he did not want to foreclose the further discussion.

Motion: Travis Hoban moved to change from a review to a sunset at the first meeting in October, with the option for the Council to renew the ordinance at that time. Seconded by Bill Fillmore.

Mr. Jones updated the draft ordinance text so that the provision would be terminated as of 11:59 PM on October 6, unless the expiry provision was repealed sooner. Councilors discussed the timeline for reviewing; some preferred a monthly review, whereas others thought the October date was arbitrary without any data to evaluate the appropriateness of a deadline. Mr. Hoban shared his thought process regarding the sunset provision.

Amended motion: Travis Hoban amended the motion to use October 20 for the sunset, and that every other month the Council review the sunset date, and that continuing the ordinance would require Council action. Seconded by Bill Fillmore.

Councilors discussed the motion. Mr. Sewell felt this could build community support, while still giving the Council discretion regarding its future applicability. Councilor Shannon Ellsworth supported the review element; she asked Mr. Hoban if he would vote for the ordinance if the Council approved the sunset provision. Mr. Hoban reiterated his previous concerns, but he felt that the motion improved upon the ordinance such that he could support it with this change.

Vote: Approved 7:0.

Mr. Bill Fillmore requested that Section 9.25.010 be amended to include “or working” within or visiting Provo. He also asked to add in lines 161-162, “where social distancing is not possible, reasonable, or prudent,” and add “indoor” to large gatherings. Mr. Jones made these changes.

Motion: Bill Fillmore moved to adopt the on-screen changes into the draft ordinance. Seconded by David Sewell.

Vote: Approved 6:0, with David Harding abstaining.

Mr. Fillmore was still concerned about not criminalizing non-wearing of masks. He was still uncomfortable with a fine associated with a civil infraction; he preferred to focus on groups rather than individual behavior. He did not want enforcement to burden the Police Department.

Motion: Bill Fillmore moved to insert a provision that before a citation could be issued, that the individual or group be given a warning. *No second was received. After further discussion, Mr. Fillmore withdrew the motion.*

Councilors discussed Mr. Fillmore’s proposal. Councilor Shannon Ellsworth was concerned about how to regulate outdoor gatherings. Councilor David Sewell asked Mr. Jones about the concept of introducing a sequence of fines or steps in enforcement, and whether this introduced any issues regarding the separation of powers. Mr. Jones explained the distinctions with the legislative powers versus the executive’s powers and discretion regarding enforcement. Mr. Fillmore asked several clarifying questions and Mr. Jones shared more details of the typical roles of the legislative and executive branches in this context. Mr. Fillmore withdrew the motion.

Mr. Jones asked for clarification on one element prior to moving on to different topics of discussion. Councilors discussed the nuances between stipulating family, immediate family, or individuals residing in the same household. Councilors also discussed the implications of the ordinance for indoor retail spaces. The intent was that even if social distancing were possible indoors, that indoor public spaces such as retail establishments, masks would be required regardless. Mr. Jones clarified that the current ordinance stipulated masks only if social distancing was not possible. Councilors discussed this nuance further; several Councilors were concerned that the nature of the language would unintentionally open a problematic loophole. The general consensus was that mask-wearing should be the consistent and preferred option for indoor settings, with certain exceptions noted.

Motion: David Harding moved to adjust the language of proposed ordinance so that there are no mandates for individuals outdoors in public spaces unless the gathering is over 25 individuals and where social distancing is not prudent, reasonable, or practical to maintain. Seconded by Bill Fillmore.

Councilors discussed the number and the settings in which group size should be restricted or not. There was some discussion of lowering the number to 10, but most Councilors preferred keeping the limit at 25 for more flexibility.

Vote: Approved 7:0.

Councilor David Sewell asked whether more time would allow the Council to find more consensus with the Mayor and City Administration. He was interested in hearing the Mayor’s comments. Councilor Bill Fillmore thanked the Mayor and City staff for their efforts in educating the public. He felt that the urgency of the situation required more than simply education and required action on the part of the Council. Mayor Michelle Kaufusi explained that she did not think they would reach consensus that quickly. Councilor George Handley echoed Mr. Fillmore’s comments about the urgency of the situation and the need to act quickly.

Mr. Jones proposed some edits to section 9.25.010 to better reflect the changes made in other sections of the ordinance.

Motion: David Harding moved to adopt the language on-screen in Section 9.25.010, Purpose, into the implied motion. Seconded by David Sewell.

Vote: Approved 7:0.

Mr. Jones then reviewed the expiration date provision and how this could be updated during future Council Meetings if the Council chose to extend the expiration date. Mr. Jones reviewed

all elements of the updated ordinance exhibit to which the implied motion would apply, noting the changes which had been made throughout.

Motion: George Handley moved that the exhibit on the screen is the version to which the implied motion applies. Seconded by David Harding.

Vote: Approved 7:0.

Councilor Shannon Ellsworth reiterated the main provisions of the ordinance. Mr. Jones noted that a grocery store did not constitute an indoor gathering; masks would be required in a grocery store if social distancing were not possible. Ms. Ellsworth was concerned if someone could theoretically go to the grocery store without wearing a mask. Mr. Jones clarified the legal nuances of the ordinance as written; in that situation, it was the possibility or improbability of social distancing that was the key factor. Councilor David Harding also commented on the ordinance, which he thought was intended to allow individuals a choice between masks or social distancing. The Council seemed somewhat split on this question. Council Chair George Handley was also concerned, but he suggested that the Council review this question further as they moved forward. He hoped that with the ordinance in place and signage posted throughout the City, that compliance would increase as well.

Vote on the implied motion: Approved 7:0.

Mayor Michelle Kaufusi shared her closing comments. She had the same end goal in sight as the Council; they simply differed in their approach of how to achieve that. She preferred the current path of encouraging self-regulation and educational efforts. She announced her intent to veto the mask ordinance. She wanted to make the announcement early so that the Council was aware of her position and intentions. She planned to act quickly in exercising the veto so that the Council could take whatever steps they felt were necessary in response.

Mr. Jones explained the process by which an ordinance is presented to the Mayor for her signature, and the timeline involved in the veto process. He outlined further details of how the Council could proceed with a reconsideration of the ordinance and vote to overturn the veto.

Mr. Sewell thanked the Mayor for her perspective and involvement in the process. He highlighted that the scientific evidence was strong that what the Council was doing would make a difference. Mr. Handley was disappointed with the Mayor's decision to veto; he was concerned that it would delay the effectiveness of the ordinance at a critical juncture.

Adjournment

Adjourned by unanimous consent.