



City of Concord

City Council

Meeting Minutes - Draft

Monday, August 31, 2020

7:00 PM

Zoom Meeting Link:
<https://us02web.zoom.us/j/8317572854>

6

Telephone Dial: US + 1 929 205 6099

Landline: 877 853 5257

Webinar ID#:831 7572 8546

1. Mayor Bouley called the meeting to order at 7:00 p.m.

Mayor Bouley welcomed everyone to the August 31, 2020 Electronic Meeting of the City Council, indicating City Council was meeting electronically due to the COVID-19/Coronavirus pandemic, in accordance with Governor Sununu's Emergency Order #12, pursuant to Executive Order 2020-04. Mayor Bouley noted that, in accordance with the Governor's Emergency Order, we have provided public notice of the necessary information for accessing this meeting. He noted that instructions are provided on our agenda on the City of Concord's website at: <https://concordnh.legistar.com/Calendar.aspx>. He further noted that Council was utilizing the Zoom platform for this electronic meeting. All members of the City Council have the ability to communicate contemporaneously during this meeting, and the public has access to listen and, if necessary, participate in this meeting via the following website address: <https://us02web.zoom.us/j/83175728546>.

If any member of the public does not have website access, they may dial the telephone number 1-929-205-6099 or from a landline 877-853-5257 and enter the password 831 7572 8546.

Mayor Bouley noted that we would not be using the Chat function in Zoom for this meeting. He also noted that testimony is only allowed for agenda items that have been scheduled for a public hearing, and public participation is not authorized for the other items on the agenda.

Anyone having a problem accessing the meeting was advised to call 603-230-4619 or send an email to: citycouncilmeeting@concordnh.gov.

The Mayor indicated that in the event the public is unable to access the meeting, the meeting would be adjourned and rescheduled at that time.

All votes to be taken during this meeting will be done by roll call vote.

Mayor Bouley asked members of City Council, when stating their presence at the meeting, to please also state whether there was anyone in the room with them during this meeting, which is required under the Right-to-Know law.

2. Roll Call.

Action: In accordance with the Right-to-Know law, Councilor Champlin indicated his wife Susan and his daughter Madeline were in the house with him. Councilor Hatfield indicated she was in Hardwick, Vermont. Councilor Kretovic indicated her husband, Bill, was in the house with her. Councilor Nyhan indicated he was in Council Chambers with City Manager Tom Aspell and Deputy City Managers Carlos Baia and Brian LeBrun. All other members of City Council indicated they were alone.

Present: 15 - Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, Councilor Nathan Fennessy, Councilor Amanda Grady Sexton, Councilor Meredith Hatfield, Councilor Fred Keach, Councilor Linda Kenison, Councilor Jennifer Kretovic, Councilor Gail Matson, Councilor Keith Nyhan, Councilor Erle Pierce, Councilor Zandra Rice Hawkins, Councilor Brent Todd, and Councilor Robert Werner

Public Hearings

- 3A. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 13 Public Health, Article 13-4, Vaccinations and Communicable Disease, by adding a new Section 13-4-14 entitled "Wearing of Face Coverings in the City of Concord - COVID-19"; together with report from the Legal Department. (Public testimony received.) (Supplemental Ordinance; together with supplemental report and additional public testimony received.)

Action: City Solicitor Jim Kennedy provided a detailed overview of the supplemental ordinance and supplemental report, which are focused on retail establishments only, before Council for their consideration this evening.

Councilor Rice Hawkins inquired as to whether or not the ordinance would apply to the Farmers Market. Solicitor Kennedy indicated the Farmers Market, like Apple Orchards, would not fall under this ordinance, rather under the Governors executive orders. Mr. Kennedy clarified that if a given Apple Orchard had a retail store, masks would be required in the store only.

Councilor Fennessy expressed his concern with how the ordinance before Council would be enforced, if approved this evening. Solicitor Kennedy indicated that to the extent the City of Concord receives complaints, the Code Enforcement Office and/or the Police Department would handle enforcement.

Mayor Bouley opened the public hearing.

Jim Potter, Concord resident and Executive Vice-President and CEO of the New Hampshire Medical Society, spoke in strong support of the mask ordinance before Council. Mr. Potter indicated that perhaps Council could consider amending the ordinance to go into effect only if elevated risk and/or community spread exists, stating such an amendment would put more science behind the ordinance being considered.

Kit Devries, therapist in Concord, spoke in support of the passage of the mask ordinance before Council.

Alan Cantor, South End resident, spoke in support of the ordinance, indicating wearing masks will help prevent a spike. He also indicated he felt it was the right thing for City Council to pass an ordinance which would make the community safer while assisting retail establishments.

Greg Gilbert, long time Concord resident within Ward ten, questioned the legality of the proposed ordinance, stating, in his opinion, the proposal may conflict with the Governor's order.

Cheryl Rounds, Derry, New Hampshire resident, spoke in opposition to the ordinance, indicating she feels threatened when everyone is wearing a mask. She further stated that with a very low death rate and a very low infection rate the mandate is unnecessary.

John Gaudet spoke in opposition to the ordinance and any mask mandate by any government agency. He stated that studies show that masks/face coverings aren't working to stop the spread of COVID. Mr. Gaudet also expressed his concerns with mandating masks be worn by all when there are many health exceptions that don't allow the wearing of masks for physical and/or emotional diagnosed reasons. Mr. Gaudet further stated that expecting Police and/or Code employees to enforce such an ordinance when they would be better served doing something else just doesn't make sense.

Bert Cooper, long time Concord resident, spoke in strong support of the ordinance and the wearing of masks.

Sarah Robinson, Concord resident, spoke in support of the ordinance. Ms. Robinson also spoke in support of children, two and up, wearing masks, stating that kids in school and/or childcare are expected to wear them now.

Zib Corell, Concord resident, spoke in support of the proposed ordinance, indicating people should be wearing masks in support of the community, as well as respect for others.

Vincent McHugh, Concord resident, spoke in opposition to the ordinance, indicating that until such time as Concord is experiencing community spread the ordinance shouldn't be approved.

John Draghi, caller, lost connection and did not comment.

Jayne Simoes, Concord resident, who lives and works downtown, spoke in support of the proposed ordinance.

Mary Deal, retired physician and Concord resident, spoke in strong support of the ordinance. Ms. Deal further stated that, in her opinion, children age two and up should wear masks.

Brian Blackden addressed Council, thanking them for the opportunity to speak on this subject. Mr. Blackden spoke in opposition to the proposed ordinance, indicating that members of City Council should be leaders not followers and vote against this ordinance.

Jason Gerhard, Northwood resident, spoke in opposition to the ordinance, indicating businesses should be responsible for the enforcement of mask wearing within their respective locations and further stating that it is not City Council's place to do so with the adoption of the ordinance before them. He further stated that New Hampshire is a beacon of Freedom, encouraging members of City Council to vote against this proposed ordinance.

Kelly Anderson, Concord resident, spoke in opposition to the ordinance, indicating she has a two year old child with Downs Syndrome that won't wear a mask. She further stated that she won't make her two year old wear a mask. Ms. Anderson

indicated that if Council does adopt the ordinance before them, she feels the age should be 10 years old and up.

Andy Robichaud, Concord resident, spoke in opposition of the proposed ordinance.

David Lheureux, Campton, New Hampshire resident, who travels in and out of Concord quite a bit, spoke in opposition to the proposed ordinance. He expressed his concern with enforcement issues that will likely arise, indicating that in his opinion, the passage of the proposed ordinance will create division.

Serena Varley, Concord resident, spoke in opposition of the proposed ordinance, indicating that, in her opinion, the passage of the ordinance isn't necessary. She further stated it shouldn't be a government decision that mandates mask wearing.

Jennifer Brayton, Chichester resident, who relocated to New Hampshire from New York about a year ago, spoke in opposition to the ordinance and mandating mask wearing. Ms. Brayton further stated people should decide whether or not they wish to wear masks, people should be allowed to make their own choices.

Lydea Irwin, Concord resident, spoke in support of the ordinance, indicating people should wear masks out of respect for others, and indicating masks are great at protecting those you are around.

Aaron Fracht-Monroe, Concord resident, addressed Council speaking in support of the proposed ordinance.

Kevin Noyes, US Military member and Northern New Hampshire resident, spoke in opposition to the ordinance, indicating that by passing this proposed ordinance members of City Council would be taking freedoms away.

Angela Mason, Concord resident, spoke in opposition of the proposed ordinance, indicating retailers can make their own choices by mandating masks within their own businesses, and further stating that businesses should be capable of supporting their own mask wearing rules. Ms. Mason, specific to children wearing masks, indicated she would not make her children wear masks, she would not raise her kids "sick until proven healthy".

Matt West, Concord resident, spoke in opposition to the propose ordinance.

Susan, caller, lost connection and did not comment.

At 9:07 p.m., there being no further testimony, Mayor Bouley declared the public hearing closed.

Public Hearing Action

4. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 13 Public Health, Article 13-4, Vaccinations and Communicable Disease, by adding a new Section 13-4-14 entitled "Wearing of Face Coverings in the City of Concord - COVID-19"; together with report from the Legal Department. (Public testimony received.) (Supplemental Ordinance; together with supplemental report and additional public testimony received.)

Action: Prior to beginning discussions about the ordinance before them, Mayor Bouley recognized Councilor Champlin, who moved to discuss and take action on the supplemental ordinance before them. The motion was duly seconded by Councilor Todd and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Action: Mayor Bouley asked for a motion to waive Rule 4 so that Council could take action on the supplemental ordinance before them. Councilor Bouchard moved to waive Rule 4 and take action on the supplemental ordinance. The motion was duly seconded by Councilor Keach and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Action: Councilor Champlin moved approval of the ordinance before Council. The motion was duly seconded by Councilor Todd.

Councilor Rice Hawkins inquired as to whether or not City buildings would be affected by the passage of this ordinance. Solicitor Kennedy indicated that public municipal buildings were subject to rules as established by the City Manager, as outlined by Article Four within the City's Code of Ordinances.

Councilor Rice Hawkins spoke in support of lowering the age requirement within the ordinance to require school aged children to wear masks within retail establishments, rather than children 10 and older, as outlined within the ordinance.

Councilor Champlin spoke in support of an amendment to the ordinance changing the age requirement from 10 years old, as proposed, to children age 5 and up. Councilor Champlin spoke in strong support of the ordinance before Council, indicating he supports any action City Council can take to protect residents within the community.

Councilor Matson expressed her overall support for the ordinance before Council while expressing her concerns, as well as her constituent's concerns, as to how the ordinance would be enforced should Council approve it this evening.

Councilor Werner expressed his support for the ordinance and Council moving forward and taking action to protect public health.

Councilor Kretovic expressed her concern as to how the ordinance would be enforced. Solicitor Kennedy indicated that, as with any ordinance, concerns would be complaint driven, further stating that complaints would be addressed by either the Police Department and/or the Code Enforcement. Police Chief Brad Osgood indicated that, Monday through Friday, during normal business hours, complaints would be handled by the Code Enforcement Office. Chief Osgood further stated that after hours and/or on weekends, complaints would be handled, as necessary, by the Police Department. City Manager Aspell indicated that the City currently has one health officer and one health inspector, further indicating, to put it all in perspective, they would not likely have lots of time to address mask wearing complaints, clarifying that when they did respond, education would be the goal. Chief Osgood indicated that, should the Police Department get calls to investigate mask wearing complaints, those calls would be prioritized with other calls pending within the department. That being said, Chief Osgood indicated that, education

would be the goal when responding to a mask wearing complaint.

Councilor Hatfield indicated she would be supporting the ordinance before Council.

Councilor Nyhan noted his agreement that we should all wear masks. He further stated that he did, however, disagree with the fact that City Council should be taking action on this item. Councilor Nyhan further stated that businesses within the community should be able to run their businesses as they see fit. Councilor Nyhan stated that businesses should have the opportunity to somehow register as a mask optional business, perhaps posting on each entrance of their given business that it's a mask optional facility allowing shoppers to choose whether or not they want to shop at a given location while allowing businesses to run as they see fit. This approach would easily identify establishments putting the onus on individuals to make their own choices by shopping where they want.

Councilor Champlin indicated he had reservations with Councilor Nyhan's potential proposal, indicating he felt that the potential amendment would be like not having a mask ordinance within the City.

Councilor Champlin indicated that, in follow-up to previous discussions regarding a potential mask ordinance, he doesn't want public education to be forgotten should the ordinance be approved by City Council. Councilor Champlin suggested that City Administration use resources to embark on a public education program should a mask ordinance be approved by City Council.

Councilor Keach supported Councilor Nyhan's suggestion for a potential amendment, which would allow a given business to somehow register as a mask optional business.

Councilor Kenison indicated she would not support a potential amendment as suggested by Councilor Nyhan.

Councilor Todd thanked the City Solicitor and members of the Mask Ordinance Committee for all of their work bringing forward the ordinance now before Council. Councilor Todd also thanked the many residents and businesses that reached out regarding the ordinance being considered. Councilor Todd also spoke in support of the ordinance as a public health and a public safety measure and not a political statement.

Councilor Rice Hawkins spoke in support of the ordinance and the need for this citywide ordinance as a public health measure.

Councilor Bouchard spoke in support of the ordinance, but not a potential amendment, as suggested by Councilor Nyhan. Councilor Bouchard also voiced her support of an amendment to the age within the ordinance being reduced to 5 years of age.

Councilor Fennessy spoke in support of the ordinance, which he hopes will help the community avoid a potential second spike in the virus. Councilor Fennessy expressed his concerns about enforcement, inquiring as to whether or not it might be appropriate to have Parking Enforcement staff address complaints during the week to reduce the workload within Code Enforcement. Councilor Fennessy indicated he would not support the opt out option for retail businesses, as suggested by Councilor Nyhan.

Councilor Pierce spoke in support of the ordinance and the wearing of face masks as one way to assist in the reduction of the spread of COVID 19.

Councilor Kretovic spoke in support of the ordinance while expressing her concerns about the ability for staff within the City of Concord to enforce it.

Councilor Nyhan moved to amend the ordinance to allow retail businesses within the community to register as a mask optional business, posting that the given business is mask optional, thereby allowing customers to make their own decisions to shop there. The motion was duly seconded by Councilor Keach and failed on a roll call vote.

Yes: 2 - Councilor Keach, and Councilor Nyhan

No: 13 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Action: Councilor Rice Hawkins moved to amend the ordinance to state that face coverings shall not be required for children under 5 years of age. The motion was duly seconded by Councilor Todd. After brief Council discussion, the motion passed 8 to 7 with a roll call vote.

Yes: 8 - Councilor Bouchard, Councilor Champlin, Councilor Hatfield, Councilor Kenison, Councilor Nyhan, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

No: 7 - Mayor Bouley, Councilor Fennessy, Councilor Grady Sexton, Councilor Keach, Councilor Kretovic, Councilor Matson, and Councilor Pierce

Action: Councilor Nyhan, recognizing enforcement is going to be difficult, moved to amend the fine for the first violation from \$15 to \$50. The motion was duly seconded by Councilor Todd. After Council discussion, the motion failed unanimously with a roll call vote.

No: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Action: There being no additional discussion about the proposed ordinance, Councilor Champlin moved approval of the ordinance as amended. The motion was duly seconded and passed, 14-1, with a roll call vote.

Yes: 14 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

No: 1 - Councilor Nyhan

Comments, Requests by Mayor, City Councilors

Comments, Requests by the City Manager

Consideration of Suspense Items

Action: Councilor Champlin moved to suspend the rules and consider the suspense items, not previously advertised. The motion was duly seconded and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Sus1 Report from the Deputy City Manager - Development recommending City Council confirm the appointment of an ad hoc committee to oversee a redevelopment assessment for the former gas holder house. Councilors Champlin, Kenison, Kretovic, Todd and Werner.

Action: Councilor Bouchard moved approval. The motion was duly seconded and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Item to be set for a September 14, 2020 Public Hearing

Sus2 Resolution appropriating the sum of \$20,000 to fund an assessment of redevelopment scenarios for the former gas holder house, authorizing the use of \$15,500 from the Economic Development Reserve as a transfer-in, and accepting the sum of \$4,500 as a donation from the New Hampshire Preservation Alliance; together with report from the Deputy City Manager for Development.

Action: Councilor Kretovic moved to set the resolution for a public hearing to be held on September 14, 2020. The motion was duly seconded and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

Adjournment

Action: The time being 10:29 p.m., with no additional Council business, Councilor Grady Sexton moved to adjourn the meeting. The motion was duly seconded and passed unanimously with a roll call vote.

Yes: 15 - Councilor Bouchard, Mayor Bouley, Councilor Champlin, Councilor Fennessy, Councilor Grady Sexton, Councilor Hatfield, Councilor Keach, Councilor Kenison, Councilor Kretovic, Councilor Matson, Councilor Nyhan, Councilor Pierce, Councilor Rice Hawkins, Councilor Todd, and Councilor Werner

A true copy: I attest:

Janice Bonenfant
City Clerk