

**Council of the Village of Yellow Springs
Emergency Meeting (Work Session) Minutes**

Virtual Meeting @1:00pm

Wednesday, July 8, 2020

CALL TO ORDER

President of Council Brian Housh called the meeting to order at 1:00 pm.

ROLL CALL

Present via Zoom were President Housh, Vice President Marianne MacQueen and Council members Kevin Stokes, Lisa Kreeger and Laura Curliss. Also present were Village Manager Josue Salmeron, Public Works Director Johnnie Burns, Police Chief Carlson, and Village Solicitor Breanne Parcels.

PETITIONS AND COMMUNICATIONS

The Clerk will receive and file the following letters received regarding facial covering and/or busking:

Jeanne Kay
Kate Mooneyham
Maria Booth
Kathryn Van der Heiden
Mary Alice Wilson
Susan Carr
Amy Wamsley
Diane Davis and Cindy Shaw
Nancy Mellon
Leslie Lippert
Margaret Koebernick
Ellen Hoover
Lisa Kreeger re: Clarification of Position on Busking
Melissa Howell re: GCCHD Position on Masks

MacQueen reviewed all communications received.

REVIEW OF AGENDA

MacQueen asked why the busking ordinance had been removed from the agenda and commented that she does not think busking should occur in town at this time. The Clerk responded that Resolution 2020-12 has taken on that language, in part.

LEGISLATION

Salmeron noted that numbers are still being evaluated for Greene County, and that there is a chance that a mask mandate will be implemented for the county under the new system.

Salmeron stated that the Village has gone almost five weeks without a new case of COVID, but now does have one new case.

Housh noted that masks are required in any county that moves into the Red Zone—Level 3--for infection.

2020-12 Requiring All Vendors and All Persons Soliciting for Donation or Gratuity in the Village of Yellow Springs to Wear a Facial Covering and Declaring an Emergency. MacQueen MOVED and Stokes SECONDED a MOTION TO APPROVE.

Housh noted that the legislation will require a super-majority to pass.

MacQueen stated that the disease has changed the nature of being downtown, that being to obtain goods and then to return home. She commented that busking is antithetical to that view. She commented her desire that customers stay six feet away from vendors and buskers.

Kreeger commented that busking is a job that she does not want to take away as an option for performers. She suggested marking out areas where this could be done safely. She stated her support for the ordinance.

Stokes spoke in favor of the ordinance as more enforceable but as also allowing for continuation of the activity.

Curliss identified the issue as persons feeling uncomfortable passing a busker, and equated this with persons seated on benches or eating outside of a business. Curliss stated that if one can socially distance, one does not have to wear a mask in all other ordinances she has seen, and asked for these exceptions to be added.

Parcels stated that the vendor/busker ordinance assumes that these persons will inherently be unable to socially distance at all times. Ordinance 2020-13 contains exemptions because it is not identifying a particular group of entrepreneurs.

Chief Carlson stated that he will continue to operate in a “resolution-oriented manner” with regard to enforcement, but sees the ordinance as a good step.

Mayor Conine expressed approval that the ordinance does not outright ban busking. She stated that it seems clear in terms of enforcement.

Salmeron commented that the policing team is outstanding and that he is confident in the PD’s ability to enforce the ordinance skillfully.

Housh pointed out the limited space downtown as a problem for performers. He stated that the space needs not to be compromised in these times. He pointed out two public safety issues related to physical distancing and facial coverings, which will be looked at in the subsequent ordinances – interactions between people and navigating the confined space of downtown.

Housh OPENED THE PUBLIC HEARING.

MacQueen stated that the rule is “mask AND six feet of separation”. She called into question the approval for people to eat but not busk without a mask.

Mark Heise commented that the jewelry vendor has moved off of the sidewalk area.

Karen Wintrow asked that vendors and buskers be treated as businesses, which separates them from average citizens not engaged in commerce.

Kate Hamilton and Diane Davis commented in favor of passing the ordinance.

Curliss commented that the ordinance would apply to the Farmer’s Market and objected to the “non-porous barrier”.

The Clerk commented that language “who are not able to wear masks” could be added to resolve this problem.

The Solicitor clarified that the ordinance does apply to all of the Village, not just the CBD.

Curliss asked that the exceptions be specifically listed.

Curliss suggested several changes and asked that the ordinance come back to Council on the 20th.

Curliss objected to criminal charges, suggesting civil charges instead.

Parcels responded that civil enforcement cannot cover an entity, such as a business, and communication and contesting requirements would make a speedy trial impossible. She commented further that the existing chapter 660.02 covers “reasonable attempts to prevent the spread of contagion”.

Curliss objected again to the potential for a criminal record.

Parcels responded that the offenses can be scaled to make this unlikely.

MacQueen asked that the ordinance be modified and that it come back on the 20th.

Stokes received confirmation that performers must both wear a mask and have six feet of distance from passers-by.

Karen Wintrow wondered if there could be a penalty to the property owner if the vendor/busker were cited on that property.

Parcels responded that this is not contemplated in the ordinance.

Housh commented that Council is considering making spaces available for buskers.

Housh iterated the proposed changes as follows:

Listing the exceptions within the ordinance, civil versus criminal, the exception to the plastic shield for food vendors, and in lieu of fines, community service.

Curliss asked for renumbering of sections.

Curliss asked that the period of time a permit can be revoked be two months or until the state of emergency is lifted.

The Clerk suggested bringing the ordinance back with the changes made to give everyone time to fully comprehend the changes and read the revised document.

Housh stated that he was prepared to vote on the ordinance.

MacQueen stated that she did not fully understand the changes.

Housh stated that he understood that “it is complicated, but could make a big difference this and next weekend.”

The Clerk commented that she is hearing from MacQueen that she is not clear what she would be voting on, and suggested the ordinance be rewritten either here or for the next meeting.

Curliss then re-configured and re-wrote sections of the proposed ordinance as follows:

Move to insert “who cannot wear a mask” into Section One. Housh SECONDED and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Move to move Section Two and renumber it as Paragraph B of Section Five and first Paragraph of Section Five becomes “A”. MacQueen SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Kreeger MOVED to renumber all sections. MacQueen SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Curliss MOVED to mirror the exceptions to mask-wearing as stated in Ordinance 2020-13, with the exception that the age is changed to “under age ten”.

Curliss MOVED to AMEND Section Five after the words “second violation” by adding the words “and subject to a \$30 fine”; third violation will result in a citation and a \$50 fine and may result in revocation of the permitchange “six” to “two” and “or a declaration from the governor that a state of emergency no longer exists, whichever is earlier;” strike the words “as determined by the Chief of Police”.

Parcels commented that the Village can only revoke local permits.

Curliss stated that the words “revocation of any local permits” should also be added.

MacQueen SECONDED. Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Housh CLOSED THE PUBLIC HEARING and CALLED THE VOTE ON THE AMENDED ORDINANCE.

The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

2020-13 Requiring Facial Covering in the Central Business District. Kreeger MOVED and Stokes SECONDED a MOTION TO APPROVE.

Parcels commented that the ordinance works in conjunction with the existing resolution. The resolution attempts to gain compliance, and the ordinance allows a Village employee to offer masks and report non-compliance. She noted that any accuser has to agree to testify as a witness if the matter goes to Mayor’s Court or Xenia Municipal Court. She stressed that any person accused can request a trial or representation, thus moving the matter to XMC.

Parcels outlined the possible charges.

Chief Carlson commented his concern for the punitive angle, noting that he is “resolution oriented”. He noted the equity issues potentially at hand and suggested focus on civil rather than criminal charges.

Mayor Conine suggested charges that could be waivable for the first three citations.

Parcels stated that she can rewrite this section to ticketing.

Conine commented that public service can carry potential liability.

Salmeron stated his confidence in the PD’s enforcement capacity.

Carlson commented that the Health Department has police powers, noting that these should be used if Greene County moved to a level 3.

Kreeger stressed that she wants compliance without criminalization.

The Clerk received confirmation that the ordinance applies to the entire Central Business District.

Curliss stated that she is not comfortable with the ordinance, given that Greene County has not reached an elevated state of emergency.

MacQueen stated objection to the enforcement section.

Housh received clarification that an individual can make a complaint if they are willing to serve as a witness in any ensuing court action.

Any person can claim exemption, Parcels said, which presents an enforcement issue.

MacQueen asked that language be changed to make the ordinance clearer.

MacQueen objected to restaurants’ ability to serve patrons who are not masked.

Housh OPENED THE PUBLIC HEARING.

Housh stated that he wants to keep community service in the ordinance as an option.

Karen Wintrow commented that people are wearing their masks at 100% compliance downtown currently, and that she finds it ironic that passing an ordinance with all of the restrictions will water down the compliance requirement.

Wintrow commented that restaurants are covered by Health Department guidelines and that those should be left out of the ordinance as already covered. She asked that the word “organized” be removed as a descriptor for sports activity to cover runners and bikers.

In response to a question regarding “what happens if Greene County goes to a level three” in terms of the ordinance, Parcels noted that it is Council’s prerogative to enforce the ordinance regardless of the state’s emergency status as long as the requirement is not LESS strict.

Chief Carlson commented that he does not anticipate conflict with the PD, but does have some concern regarding the citizen complaint mechanism.

Megan Bachman, Yellow Springs News, stated that the sidewalks portion of the ordinance is very confusing, and asked for clarification.

Kreeger commented that taking a mask on and off can be problematic, so advised wearing a mask at all times when in the CBD.

The Clerk asked for clarification as to rewording the ordinance to require all three steps when in the CBD.

Housh CLOSED THE PUBLIC HEARING.

MacQueen objected again to persons who are eating and therefore do not have to wear a mask, opining that this is “unfair”.

Kreeger responded that restaurants are covered by the health department, and outdoor food consumption is generally associated with the restaurant.

Housh MOVED to change section B 3 to add “when physical distancing is not possible”.

The Clerk and MacQueen expressed confusion as to intent.

Housh asked that bicyclists be exempt.

Language was changed so that the requirement is for either a mask or physical distancing.

Curliss suggested that Parcels consult with the Mayor and Manager regarding changes to the penalty section. She asked that “Xenia Municipal Court” be removed, and asked for another week for businesses to react.

Wintrow stated that she has advised businesses of the proposed legislation and most are already imposing these requirements. Their concern is primarily around enforcement, she said, and she believes there is support for the measure.

Kreeger pushed for a vote today.

MacQueen MOVED TO AMEND Section One to add “if not able to maintain a distance of at least six feet” and to change age of exempted child to “under 10”. Stokes SECONDED, and the MOTION PASSED 5-0 on a ROLL CALL VOTE.

Housh MOVED TO AMEND all references to “social distancing” to “physical distancing”. Kreeger SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

MacQueen MOVED TO AMEND Section B “Definitions” to add the words “if physical distancing is not possible”. Stokes SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Housh MOVED to change the age of the exempted child under Section C, “Exemptions” to “under 10 years old.”; Number seven, the word “organized” is struck; number seven, the words “and cyclists” are added after “motor vehicle”. Stokes SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Curliss asked that the words “Xenia Municipal Court” be removed. This was objected-to by the Mayor and the Solicitor as impermissible, since all cases in which the charged person wishes to go to trial must go to XMC.

Parcels stated that local ordinances are all written to start and finish in Mayor’s Court, and only move to XMC at the request of the defendant.

Parcels explained the rationale for the charges in the section.

Curliss MOVED to AMEND the penalty section to change the time frame to “within two months” and to add the words “up to” before the fine amount of \$30 and \$50. MacQueen SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Kreeger MOVED TO APPROVE Ordinance 2020-13 AS AMENDED. STOKES SECONDED, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

2020-14 Requiring Facial Covering in All Places of Business in the Village of Yellow Springs.

This Ordinance was briefly discussed, and was not read in with the understanding that it was written as a backup should ordinance 2020-13 fail to pass.

ADJOURNMENT

At 3:31pm, MacQueen MOVED and Curliss SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 ON A VOICE VOTE.

Please note: These notes are not verbatim. A DVD copy of the meeting is available for viewing in the Clerk of Council’s office between 9am and 3pm Monday through Friday or upon request from Channel 5.

Brian Housh, Council President

Attest: Judy Kintner, Council Clerk