

MINUTES
JANUARY 13, 2022
CITY COUNCIL SPECIAL MEETING
EILEEN DONDERO FOLEY CITY COUNCIL CHAMBERS
6:00 P.M.

I. CALL TO ORDER – MAYOR MCEACHERN

Mayor McEachern called the meeting to order at 6:00 p.m.

II. ROLL CALL

Present: Mayor McEachern, Assistant Mayor Kelley, Councilors Moreau, Blalock and Cook in person. Councilors Tabor, Denton, Bagley and Lombardi attended via Zoom.

III. DISCUSSION OF PUBLIC HEALTH DIRECTIVE ON FACE COVERINGS

Mayor McEachern explained the reason for the special meeting is 3-fold; to allow the public to weigh in on the face covering directive, to have the discussion with this Council, who has not yet done so, and to hear from the City Attorney regarding the legality of the directive. He stated we will also get an update of the current statistics. He reminded everyone in person that masks are required in the building and at the podium when addressing the Council.

City Manager Conard stated this is a proud, united front on an important matter regarding the health of the citizens of Portsmouth. She reviewed the timeline of the recent rapid onset of COVID-19 and the statistics of current cases and hospital inpatient activity. She stated that there are also staffing shortages in the health care facilities due to staff members being infected as well. She stated she worked with Health Officer McNamara and Emergency Management Coordinator/Fire Chief Germain on the Public Health Directive on Face Coverings which became effective January 7, 2022.

Councilor Blalock stated that the numbers are high but feels that they also don't reflect home testing results so they are probably even higher.

Councilor Cook asked why we issued the directive under RSA 147:1[1] and not RSA 141-C and the difference in the legality of the directive.

City Attorney Sullivan explained there are a number of ways that the city can compel or require citizens to wear masks and that on January 7th, the Health Officer felt a need to act as quickly as possible. He stated the ordinance process takes at least a month and so the directive was issued after the legal department determined the fastest way to act.

Councilor Moreau asked why specifically was RSA 147:1 referenced instead of the Communicable diseases chapter.

City Attorney Sullivan stated this seemed to fit the current situation and allow us to act quickly.

Councilor Tabor stated he is 100% in favor of this and cited that between Christmas and New Year's, the numbers have risen and the first regular meeting is not until January 24th. He stated he has tested positive and is why he is not able to attend in person and feels that masks will slow the spread and keep people safe.

Councilor Bagley stated he has tested positive as well. He stated it sounds like most of the Council supports the directive and wonders if it needs to be codified although we may only need it for a couple of weeks.

City Attorney Sullivan stated that the City Council is not required to codify the directive and the Health Officer has the authority, but if the Council wants to vote to that effect in a show of support, they can do so.

Councilor Blalock stated we need to lead by example and show we support the decision made by the Health Officer. He stated he runs a restaurant and we need to protect these front-line workers.

Councilor Moreau stated she supports this and wants to do it legally and defensibly. She stated she had already instituted a mask mandate in her office but will not force someone to do it.

Councilor Cook stated she is in support of this directive and of an ordinance as she is married to a health care professional who is concerned with people not being able to get the care they need because people with COVID taking up the space and straining the healthcare system and workers.

Assistant Mayor Kelley stated she supports the directive as well but would like to know what the numbers would need to be to drop the directive.

Health Officer McNamara stated it is a complex issue as the numbers are artificially low due to home testing but we are still concerned with the hospital capacity rates and death rates due to the different variants. She stated they are hoping that the rates will drop quickly and if a good majority of people are wearing masks, then hopefully they will come down. She stated if we are looking for a percentage then she would look at 8% which is what the schools are using.

Councilor Lombardi supports the motion but is concerned with enforcement and will it be up to the businesses.

City Attorney Sullivan stated the enforcement mechanism is two-fold; first, a violation of a public health directive is a civil infraction; and secondly, if anyone refused to comply inside a building, for example city hall, they could be issued a trespass order under state law and could be summonsed. He stated that this is more about education than enforcement.

Mayor McEachern stated he supports the directive and the way it was implemented. He continued that it is good governance to keep citizens safe and is a fundamental function of government and is why we have police, fire, etc. He stated we have 4 Councilors participating via Zoom and a positivity rate that is near 30% which is up from the safer 8% in December.

IV. PUBLIC COMMENT (participation may be in person or via Zoom)

Mayor McEachern opened public comment stating that there would be a 3 minute time limit and Portsmouth residents would speak first.

Brian Wazlaw – spoke in favor of the public health directive citing the current omicron surge. He continued that we have Army guardsmen filling in for health care workers, and we need to promote the health and welfare of our neighbors and get vaccinated and wear face coverings to reduce the transmission rates.

Bill Downey – spoke in favor of the initiative stating that 2 years into this people are educated on the issue and we don't get to choose whether we wear a seat-belt to keep us safe and feels that the police should be enforcing the mask directive.

Alan Porch – spoke opposed to the directive stating that the rate of infection is not a public health risk and that many of the deaths occurring are people that have other underlying health issues. He stated that this action is alarmist as this isn't the same COVID as before.

Greg Mahanna – read information from the City directive and State RSA's and discussed discrepancies between the two stating that the City Manager is being equated as a selectman in this scenario when it is a City Councilor that would be the equivalent. He stated it is the City Council that makes policies and not the City Manager and that this directive is in violation of the City Charter.

Marie Nelson – stated she works in the restaurant industry and has been wearing masks since day one. She stated that since this directive has come out people are not taking it seriously because there is not enforcement or repercussions and it makes it hard to deal with customers who can become irate when asked to wear the mask. She stated the anxiety exemption is well intended but is not accomplishing what it was meant to do.

Sue Polidura – stated she would like to know the difference between a directive and a mandate and feels that this should have been handled through the City Council process. She stated she wasn't aware of the directive until visiting a local store and was chased around by an employee telling her she needed a mask. She stated that the directive is confusing and there needs to be guidelines and enforcement as was in the previous ordinance.

Petra Huda – stated she is not for or against the mandate but is questioning the process taken as it followed an incorrect RSA for a city. She stated it is unclear what the Council is voting on tonight and asked City Attorney Sullivan to review the RSA's.

Ken Riley – read a prepared statement in opposition to the mask directive stating that vaccinated people are being punished when they complied with the call to get the vaccine. He stated that there should be incentives for the unvaccinated to get vaccinated and not keep taking way more and more from people.

Rick Becksted – congratulated the new Mayor and City Council and stated he wished they didn't have to go through the same thing with COVID as the previous Council. He continued that he feels the incorrect RSA was used for issuing the directive and feels the elected body should be making the decision and not the City Manager. He agrees that vaccinated people should not be a part of the directive and feels that this will hurt businesses and that they should be able to decide the policy for their own establishments. He stated that Health

Officer McNamara has done a good job but he feels that both sides of the issue need to be heard and urged the Council to hold a real public hearing.

Rich DiPentina (via Zoom) – stated he supports the directive and feels that it is unfortunate that the State isn't complying with its own laws which means each community has to decide themselves. He stated that death isn't the only bad outcome from COVID and listed various other complications that can occur.

Nicole LaPierre (via Zoom) – stated that 843,000 Americans have died since COVID began and to hear this being diminished is maddening and sad. She continued that the Omicron variant is driving an increase in hospitalizations and without the directive it would destroy hospitals who are already over capacity. She thanked the City Manager and Health Officer as this issue needed immediate attention.

Pat Bagley (via Zoom) – stated she fully supports the directive and has relied upon the Health Officers' guidance in the past regarding COVID. She stated she understands the issues with the businesses and is thankful that this was put in place even if it didn't follow protocol because the pandemic isn't either.

William Holscher (via Zoom) – stated he feels the directive is appalling as the City Council represents the people of Portsmouth and not the County and State which are the figures they are using for justification. He stated decisions should be made based on facts and proper context and RSA 147 is not meant to be used for communicable diseases.

Ann Birner (via Zoom) – stated she appreciates the directive and she appreciated the previous Councils ordinance as well but that process took a long time.

Derek Hayward (via Zoom) – spoke opposed to the mandate stating that we have been living with this for 2 years and people are educated on the issue and should be able to decide if they want to wear a mask or not. He stated this has had a negative impact on children and suggested that all aspects of individual health should be included in the conversation.

Laurie McCray (via Zoom) – spoke in favor of the directive stating that although it isn't perfect it is necessary. She stated she is a nurse and has seen a lot handled in the ICU's and Emergency Departments but this has overwhelmed everyone. She thanked the City Manager, Health Officer and other residents who support the directive as she feels no one should feel unsafe because others are not wearing masks.

Judy Miller (via Zoom) – stated she supports the directive and does shop locally. She stated that residents are still supporting our businesses and feels we should come together as a community and support our City Council in this endeavor. She stated the Library has always required masks and feels Spinnaker Point staff needs to educate the citizens who don't want to wear the masks.

Martha Wassell (via Zoom) – Greenland resident – stated she is an employee of Wentworth Douglass Hospital and a former Health Officer for the Town of Greenland but her views are her own. She spoke to the strain the Omicron variant has placed on the hospitals and staff and the patients that are taking up spaces from other people that can't get treated. She stated there is universal masking at the hospital which has resulted in almost zero transmission.

Seeing no one else wishing to speak, Mayor McEachern closed the Public Comment.

Councilor Denton moved to ratify the January 7, 2022 public health directive and to hold a first reading of the previous mask ordinance at the January 24, 2022 City Council meeting. Seconded by Assistant Mayor Kelley.

Councilor Denton stated that this motion is to show support of the directive and to bring the issue back for codification.

Councilor Moreau asked how many meetings it would take to ratify the ordinance.

City Attorney Sullivan explained the normal ordinance process takes 3 readings, 3 meetings.

Councilor Blalock asked if the rules could be suspended to speed up the process.

City Attorney Sullivan stated yes, at 2nd reading they could suspend the rules to take up the 3rd and final reading as well.

Councilor Bagley explained that he has lung issues and so this variant does affect people's health so he fully supports the motion. He stated that the number of kids missing from schools is astounding and the 406 currently active cases is double from last year. He asked if we have attendance numbers from the schools for both children and teacher absences.

City Manager Conard read statistics provided to her by Superintendent of Schools Zdravec.

Councilor Bagley stated that the mask mandate will help keep schools open.

Assistant Mayor Kelley stated that as a business owner she sees a lot of residents who aren't able to work from home and have no sick time or vacation leave. She stated that all residents need to be included in these decisions and people she deals with on a daily basis are the blood and sweat of the community and also support this directive.

Mayor McEachern asked if we are undermining the directive by bringing forward an ordinance.

City Attorney Sullivan stated both can co-exist.

Mayor McEachern thanked everyone for coming out and speaking and for being respectful through this difficult situation that we find ourselves in.

V. ADJOURN INTO CITY COUNCIL WORK SESSION:

At 7:20 p.m. voted to adjourn into Council Work Session.

Respectfully submitted:

Valerie A. French
Deputy City Clerk