

**SPECIAL CALL CITY COUNCIL MINUTES
TUESDAY, MAY 12, 2020 1:30 P.M.
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

PRESENT: Mayor Tony Young; Vice Mayor Laura Moss; Councilmember Robbie Brackett; Councilmember Joe Graves and Councilmember Rey Neville **Also Present:** Monte Falls, City Manager; John Turner, City Attorney and Tammy Bursick, City Clerk

1. CALL TO ORDER

A) Pledge of Allegiance

Vice Mayor Moss led the audience and the City Council in the Pledge of Allegiance.

B) Roll Call

The City Clerk performed the roll call.

2. PUBLIC HEARINGS

A) RESOLUTIONS

- 1) A Resolution of the City Council for the City of Vero Beach, Florida, directed to the State of Florida Governor Ron DeSantis requesting the expedited reopening of “Nonessential” Businesses within the City.**

The City Clerk read the Resolution by title only. She read into the record two (2) public comments that had been sent in. One (1) was from Mr. Brian Root and the other was from Mr. Keith Drewett (both are attached to the original minutes).

Mayor Young reported that today they would be specifically addressing a proposed Resolution directed to the Governor asking him to reopen nonessential businesses in Vero Beach. But, before they do that he acknowledged that Mr. Bob Greco who has worked for the Recreation Department for the last 20 years will be retiring. He wished him success in all his endeavors.

Mayor Young commented that they received a copy of the Resolution that the City and County of Okeechobee passed giving them some wording to use for their proposed Resolution that is before them today. Since the beginning of the virus the City Council has been engaged every step of the way, which is what they should continue to do. He said this whole Council has respect for each other and the collective body will reach the decision that they think is best for the citizens of this community.

Mr. John Turner, City Attorney, went over the changes that he made to the first Resolution that was drafted and that Council received. They now have a revised copy of the Resolution, which is before them today. He read what the changes were. In the sixth Whereas clause on page 1 of 3, the words “Executive Order 20-71” was taken out of the paragraph. On page 2 of 3 the first five (5) Whereas clauses now read: *WHEAREAS, further, while the Task Force Final Report calls for the Phase 1 reopening of restaurants and retail stores at 50-percent building capacity, Execute Order 20-112 limits restaurants and retail stores to 25-percent building capacity; and WHEREAS, small businesses, such as*

restaurants and retail stores are an essential component of the economy and community of the City of Vero Beach; and WHEREAS, the owners and employees of such small businesses are hardworking individuals with families, mortgages, and other necessary expenses that do not stop when their businesses are shut down; and WHEREAS, small businesses within the City of Vero Beach and throughout the State face the serious threat of permanent closure as a result of a continued shutdown; and WHEREAS, as of May 12, 2020 Indian River County has only had 102 confirmed cases of COVID-19 since the beginning of the pandemic, has only had 12 confirmed cases in the last 14 days, has a current positive test rate of less than 5%, and the residents, businesses, and government of Indian River County have all worked hard to adhere to all of the state and federal mandates, guidelines, and best practices for prevention of the spread of COVID-19; and.

Vice Mayor Moss referred to one of the public comments that was made asking “Is your City sovereign from the State, as States are sovereign from the Federal Government.” She asked the City Attorney to respond to that question and address the legal aspects. She said there are a lot of people in the community who are not clear as to the chain of command.

Mr. Turner stated that generally speaking under the pyramid; under the State is the Governor and Legislature. The Legislature is granting the Governor the authority under the Emergency Management Act and that Act allows the counties and municipalities to adopt emergency powers that must be consistent with the State.

Mayor Young asked the City Manager to give an update on COVID-19.

Mr. Monte Falls, City Manager, reported that there were two (2) new cases as of today. They are now up to 102 cases in the County and that would give them 12 cases as of May 12, 2020. However, the percent positive continues to go down as their testing goes up. A week ago they were at 4.7% percent positive and that has gone down to 4.2% positive testing. The State of Florida has adopted 10% as the acceptable percentage and they have been below that for several weeks now.

Mr. Neville asked if there has been non-symptomatic people tested so they can perform certain duties.

Mr. Falls explained right now that the testing was based on if someone has symptoms. He said asymptomatic people can get the tests, but they have to pay for it.

Mr. Graves forwarded a newspaper article (attached to the original minutes) that appeared in TCPalm today entitled “DeSantis: State results show positive trends.” Governor DeSantis said in the article that in 64 of the 67 counties if you look at the trends at some of the things that they monitor, you would see a lot of positive trends. The State of Florida is reporting 405 new cases from Florida residents, but they have received about 20,000 test results and that is about a 2.12% positivity rate.

Mayor Young stated that as of yesterday, looking from April 26, 2020 to May 9, 2020, over the last 14 days lab tests for Florida residents and non-Florida residents was 1.5% for Indian River County.

Mr. Neville commented that what is happening is people who have symptoms that they think might be the Coronavirus (such as a cold), they go in to get tested and they don’t have the Coronavirus so the number is then lowered. He asked if that was essentially what they were talking about.

Mr. Falls could not answer that question because he is not privy to that information. But, he has heard that there is plenty of testing capacity so maybe they are testing people with less symptoms than more. The only asymptomatic person to be tested would be first responders.

Mayor Young felt that if someone has the symptoms and they are concerned then they should get tested.

Police Chief David Currey stated that he belongs to an Association that consists of nine (9) counties and Indian River County is the lowest county to have positive cases out of all nine (9) counties.

Mr. Graves commented that he made most of his comments relevant to this matter at their last City Council meeting.

Vice Mayor Moss gave a summary of what was discussed at their last City Council meeting. A number of the City Council have been approached by the public and have received emails about only allowing restaurants to serve at a 25% capacity, which was not going to be helpful to those businesses. She said that they are saying that 25% is not a high enough number for them to actually make money, stay in business, and support their employees. She said that 50% had been recommended by the Task Force appointed by the Governor and for whatever reason he chose not to include the 50% number in his Order. That is the main thrust for this Resolution requesting that the Governor go to 50% because that will allow their local restaurants to make some money and hopefully stay in business. She thanked the lawyers in the room for reviewing all the legal details.

Mayor Young read Section 2 on the second page of the Resolution where it states *“The City Council for the City of Vero Beach, on behalf of the residents and businesses of the city of Vero Beach, given the unique circumstances of this community, formally request that Governor Ron DeSantis expedite reopening of businesses within the City of Vero Beach”*. Section 3 reads: *“That Governor Ron DeSantis fully and immediately implement all of the recommendations of the Governor’s Re-Open Florida Task Force Final Report for Phase 1, and thereafter proceed on an expedited basis to further the reopening in Phases II and III of the Final Report, consistent with the evidence-based benchmarks contained therein.”* He feels this is one of the concerns that was drawn from the last Council meeting is the balance between public health and civil liberties. There was a very good discussion video-taped by John Hopkins balancing these two (2) things. There is an acknowledgment of the importance of liberties and the necessity to protect the vulnerable. For some of the population the virus can be perceived as a threat. We need to make sure that we have precautions to safeguard that. If you look at the measures that they have before them the hospital capability is present and if they look at the Department of Health’s ability to respond to cases they have adequate manning at this point locally to do tracing.

Mr. Neville asked if they were doing it.

Mayor Young said it depends on the number of cases that need it.

Mr. Neville mentioned that they have some new cases in Indian River County.

Mayor Young said that it was a matter of course and they have the ability to do that.

Mr. Neville asked Mayor Young if he was certain of the fact that the Department of Health here in Indian River County is in fact contact tracing.

Mayor Young answered yes. He had discussions concerning that this morning.

Mr. Neville said then they are getting different stories.

Mayor Young said that is why they have the updates on the Coronavirus. The other point that he wanted to make was that Florida Aggregate Testing was 7.3% and Indian River County is at 4.2%. The Treasure Coast County that is above the Florida percentage is Martin County. He said Martin County has roughly the same population as Indian River County and they are at about 92 cases and Martin County is at 250 cases with hospitalization at about twice what they have. Out of abundance of caution, he is leaning towards saying lets go slow, but if they look at what is on the ground the total hospitalization for Indian River County has 25 cases and the hospital has adequate capacity to manage that. At today's hearing with the Senate Committee for reopening the economy, Dr. Fauci said specifically that he wanted to make sure that they were not jumping the benchmarks that had been established. He said if you look at the cases relative to Indian River County they have been very fortunate.

Mr. Neville commented that this is a complex issue. He said that some of the Whereas clauses in the Resolution don't form basis and fact, which you would then support a conclusion in a proposal like this and that worries him. The Governor's step by step approach is what they need. The Governor removed the ban on personal services, such as barber and beauty shops in only a week after starting his Phase 1. The Governor is observing what is going on and making decisions on a day by day circumstance. They are dealing with two (2) constituencies here. They have the non-essential businesses and their customers. The restaurants have only been in operation for one (1) week at 25% capacity. This 25% operation has given them the opportunity to learn how to operate under social distancing guidelines. The low risk opening gives the State the opportunity to evaluate the performance based on 25%. If they jump from 25% after only one (1) week to 50% they will have no real measures. They don't have any real measure whether or not at the 25% level it was effective. He is of the opinion that they should stay the course for the second week, which would then reveal if any infections still occur. They don't know if they will occur, but it will give them a complete benchmark to deal with. So then if they go with 50% and then find the infectious rates have increased they can pull back to 25% and be fairly confident of having a lower infection rate or not. But, at least they will have these benchmarks. He feels that early termination at this time is premature. From a customer's point of view, he thinks they feel more confident knowing the restaurants will be socially distancing and conservative in their initial approach. He said that Vero's population is 25% and then 33% of the population is in the County. He said the median age in Indian River County is 50. They are dealing with an older clientele going to these establishments. So if you want to bring those customers out they have to create an environment that they are comfortable in. He thinks at a 25% level that customers would be willing to come out and enjoy a meal. On the other hand if they are at a higher percentage where it seems risky that will keep people from coming out and experiencing a restaurant acknowledging the fact that some smaller places will find it impractical to open at a 25% level. With the age of their demographic, he thinks a measurable scientific approach here is warranted. They are not like Okeechobee. People that go to Okeechobee stop for gas, have lunch and keep going. That is not like Vero Beach. They are a destination City. They have had instances where groups of folks have come to Vero Beach to have a good time because they can't do it in Miami. He gave some examples of different things taking place. He said Elite Airways is now serving them. They disembarked around

25 people on their last flight. The Health Department is not meeting the incoming flights at the Airport. What is happening is they are filling out their forms and handling them to the Police Department who is taking them to the EOC and they don't know what they are doing with the forms and whether or not there is documentation to confirm that these people are self-quarantining themselves the 14 days required by the Emergency Order. They have unknowns out there to deal with, which tells him that the Governor is correct in moving this along slowly. He is convinced that Okeechobee could go to 50% because their community is so different from Vero Beach. Each County has its own characteristics and this community is vastly different from Okeechobee. The Task Force is made up of 112 members and only 11 of those members are medical professionals, the rest are CEO's. He does not know how the Task Force came to the 50% rationale, but they have to take it on faith that was the right thing to do. There was no backup material to go with the report that they submitted. He admired the efforts of the Task Force. They have laid out a lot of good ideas, but none of them were based on logical rational that he could come up with. He reiterated that he felt they should wait the full two (2) weeks and then at the conclusion of the two (2) weeks if there is still low reporting then maybe that would be the time to resurrect this Resolution. He felt that it might be worthwhile that if this is something that the City is very concerned about then all of their City businesses that have personal contact with people be required to have licenses. It would seem to him that now that they are going to be self-imposing in some cases certain requirements it would be a worthwhile endeavor if they could afford to have staff go around and examine the restaurants that are open and serving the 25% and have a criteria for grading them and publish that criteria in the newspaper or some other public media source. This would allow the customers to see what kind of rating these restaurants fall under. This would make a difference in the community. Giving confidence that their businesses are complying with the safety requirements that they expect of them.

Vice Mayor Moss commented that if she understands it correctly this Resolution is to request the Governor raise the restaurant capacity from 25% to 50%. It is not something that the City Council is changing.

Mr. Turner said that was correct.

Vice Mayor Moss commented that for the community the City Council is not deciding on anything and nothing is happening tomorrow. They will vote on this today and it will go to Tallahassee and hopefully the Governor will consider it. There will be an element of time involved no matter what and nothing will happen tomorrow. She doesn't think that the Governor is waiting at his desk to get this Resolution and decide on it.

Mr. Brackett stated that he is very much in favor of this Resolution. It is about reopening their businesses. They have managed the pandemic already and they have flattened the curve and now they are discussing reopening, which was what the Task Force was supposed to do. Some restaurants have not opened because they can't survive at 25% capacity. He said business owners are dying out there. The cure will be worse than disease if they don't do something. He can name at least four (4) restaurants in this area that will not open again. There are a number of businesses that he leases to and they are dying if they can't get their businesses reopened. He would argue that they are not as different from Okeechobee as Mr. Neville may think that they are. He said that Okeechobee has thousands of people that live there part time because of fishing. They have a lot of RV camps and a big traffic of winter residents that go there to fish. He spoke to three (3) different restaurant and bar owners who told him that it was getting worse since things have opened up. They are getting less

traffic and they are very concerned. They are concerned about how they are going to put food on their own table, let alone pay their employees. The longer this goes on the worse it is going to get. He said people want to go back to work and do it in a safe way. As leaders they need to encourage the Governor to continue to look at this reasonably. The stats in the County look pretty good and businesses are waiting to get open. He encouraged Council to move forward with passing this Resolution and sending it to the Governor.

Mr. Graves commented that as he stated at the last Council meeting, as a lawyer this whole issue of trampling Constitutional rights does not sit well with him at all. The fact that the State government in this case can step in and decide who can and cannot operate a business and then impose arbitrary numbers of how that business can operate is unbelievable to him. As a City they should look at the Emergency Management Act as a whole because there has to be local control. He doesn't think when the Emergency Management Act was drafted that they envisioned something like this (referring to the Coronavirus) or something to be as prolonged as this has been. He said with Federal and State law conflicts with their Federal rights guaranteed under the Constitution, which are being trampled. He said people are hurting and being denied fundamental rights to be able to operate a business. He said in looking at the Task Force report (on file in the City Clerk's office) it has its own criteria for reopening. He said throughout this they forgot why they shut everyone down, which was because they wanted to make sure that they had facilities capable of taking care of folks if they were to become ill. They wanted to make sure that they had enough hospital beds and ventilators, etc. They have none of these problems and there is a low infection rate. At the last Council meeting it was reported that they are only using 20% of the ventilators that they have. These are the things for reopening that need to be looked at and these things are available. When you are taking away someone's ability to operate a business it is a serious thing. Every day he is watching businesses go out of business and no longer able to operate. He thinks that they are going to see more of it as time goes on. It is not going to be an easy thing to recover from. He thinks that the initial information that they were given as citizens was a little bit scary and frightening and they all abided by what their government asked them to do. He said as more testing occurs and as time goes on they will see the infection rate continue to decline. He said even under the Governor's Phase 1 plan, he thinks all the businesses should be open and they should be able to trust their citizens to operate their businesses with the proper measures put out by the CDC. They don't live in a Country where the government comes in and imposes all these restrictions and tells businesses and individuals how to do something and take away their individual rights. He said even at the Governor's Phase 1 reopening that they are currently in it says 50% capacity for the restaurants and they are only at 25%. He wanted to know what that was based on and what was the rationale for it. It also talked about gyms reopening at 50% capacity and their gyms are closed. It talks about movie theaters, concert halls, etc., being open but utilize strict social distancing and operating no more than 50%. He said these businesses are not open. The large sporting events are also not open. He said it makes no sense to have guidelines and arbitrary businesses that are not based on anything that they can point to. This has become a political issue and it should not be. As a City Council they should be willing to stand with their citizen and business owners. There are people that need to put food on the table to feed their families. As a Council they should stand by these people even though they might not have the authority to impose any of these things and they should stand up and say enough is enough. He wanted to address the issue of the Emergency Management Act if it is ever imposed again. The municipalities need to have more local control, which they have none. It is disconcerting to know that their Governor has this authority under the Emergency Management Act over them and over their citizens. He said by passing this Resolution they are saying that they want businesses to open and continue practicing safe guidelines. He supports this Resolution and the remarks made by each Councilmember.

Mr. Neville commented that they are all regulated, but it is so common that they don't think about it. Like restaurants are licensed. He said someone just can't open a restaurant in the City of Vero Beach without having a license. He said everyone must comply with health code standards and that there are all kinds of barriers that must be dealt with in opening a restaurant/business that are imposed by the State. He said that the State does have power over many things.

Mr. Brackett agreed with Mr. Neville that there are barriers and rules to be followed.

Mr. Neville read a paragraph out an article that he had.

Mr. Brackett commented that the government has arbitrarily allowed some businesses to stay open and has closed others. He can make an argument that you are safer to shop in the small local businesses then you are allowed to go to Walmart where it is crowded. He said right now they are sending everyone to big "box" stores. He said you can go into Walmart and purchase sporting goods, but you cannot go to Scott's sporting goods and purchase those items because he is not allowed to open. He would make the argument that every business is essential. He hoped by passing this Resolution it would encourage the Governor to take these prudent steps. He said that he has supported the Governor on what he has been doing, but now they are past the emergency points and these businesses should be allowed to reopen more than what they are now.

Vice Mayor Moss reiterated that what the Council is doing with this Resolution is creating an opportunity or urging the Governor to create an opportunity for businesses to reopen at 50% and for people to patronize those businesses if they wish to. They started with public comments today, which she read the first sentence. It reads "*people will resume activities when they feel safe, not because of one percentage or another.*" This Resolution once all is said and done and if the Governor agrees with it and goes to 50% it is merely creating an opportunity for the people to decide what activities that they want to attend.

Mayor Young agreed with moving forward in a safe manner and reopening the businesses. He said it is not only the small businesses, but some of the medical facilities that if elective surgeries were not allowed they would have gone out of business because of the constraints.

Mr. Brackett made a motion to approve the Resolution with the minor changes read by the City Attorney at the beginning of the meeting. Vice Mayor Moss seconded the motion and it passed 4-1 with Mr. Neville voting no, Mr. Graves yes, Mr. Brackett yes, Vice Mayor Moss yes, and Mayor Young yes.

Mr. Falls stated that typically on Tuesdays he reinstates the local State of Emergency Act. He said on Friday it would make the ninth week they have had it in affect. He reported to Council that he has not had to use any of the special powers conferred to him in that Emergency Management Act. He said they do these things when the City Council is not available, such as during a hurricane. However, in this situation there was rarely a day that has gone by without him talking to each of the Council. He said with that being said they are going to let the Emergency Management Act expire so they won't be signing it again and then it if becomes necessary they can put it back into effect.

Mayor Young commented that it is the consensus of the Council that Mr. Falls has done a marvelous job and the Council appreciates it.

Mr. Falls accepted that on behalf of staff who is fantastic to work with and they will continue to move forward and be safe.

Mr. Graves asked the Clerk to put on their next meeting discussion of having a policy for City Councilmembers to send out letters using the City's letterhead and electronic signatures.

Mr. Turner said that he would come up with some recommendations regarding this policy.

It was a consensus of Council that the Mayor be given the authority to send the Governor a letter, which is separate from the Resolution that is being sent to the Governor.

3. PUBLIC COMMENT

There were two (2) letters read into the record at the beginning of the meeting. They were from Mr. Brian Root and Mr. Keith Drewett (both letters attached to the original minutes).

4. ADJOURNMENT

Today's meeting adjourned at 2:24 p.m.

/tb