

MINUTES

THE COMMON COUNCIL

March 18, 2020

10:00 A.M.

A SPECIAL MEETING OF THE COMMON COUNCIL FOR THE CITY OF CHARLESTOWN WAS HELD ON WEDNESDAY, 03/18/2020 AT 10:00 A.M. AT CITY HALL WITH MAYOR, TREVA HODGES PRESIDING.

Council members present were Ruthie Jackson, Brian Hester, BJ Steele, John Cox and Bo Bertram. Also present were Clerk Treasurer Donna Coomer, Common Council Attorney Michael Gillenwater and City Attorney Mickey Weber.

Meeting Legality

Mayor Hodges said we will forgo any other city business. Council Attorney Mike Gillenwater said he will advise his clients; he thinks this meeting is being held illegally and if they want him to talk about that he will. Mr. Gillenwater said an agenda must be posted on the door where the meeting is being held. City Attorney Mickey Weber said the governor issued yesterday that all notices can be posted electronically. Physical notices are no longer required for the duration of the declaration state of emergency. Mr. Weber said it was his opinion the Indiana code provides for the existence of an emergency and you can dispense with the time of notice of a public meeting of a board or governing body. The U.S. President and Indiana Governor Holcomb has declared a public health state of emergency. Mayor Hodges said we can confirm that we have a quorum and the Council can decide on how they want to proceed. Mayor Hodges took roll call and all council members were present.

RESOLUTION 2020-R-03

Mayor Hodges is presenting Resolution 2020-R-3. This resolution is a provision of relief for the present public health emergency. Since the council's attorney has offered an opinion of advice, she opened it up for council discussion prior to considering this resolution. Mr. Gillenwater passed out a copy of the State of Indiana Public Access Office an advisory opinion that is consistent to the advice he just gave them. There are circumstances on which a meeting can be held on an emergency basis. When there is insufficient time to provide notice for example like when we had Hurricane Ike a few years ago. If you can't wait 48 hours, then you can declare this an emergency. There is a distinction when you find reasons to sidestep the open-door laws. Mayor Hodges said she did issue an executive order that does everything in this resolution and is in place for seven days. We have confirmed coronavirus cases in Clark County. Other City Halls and the Clark County Courthouse have acted. Governor Holcomb and the President of the United States declared this a state of emergency and it was signed on March 16, 2020. It clearly waived providing physical notices. Indiana Code Section 5 certainly constitutes an emergency by both the governor of Indiana and the President. The Council can approve this Resolution today or adjourn this meeting and call it 48 hours later.

She did the executive order because she felt it was imperative to do it, not only to make it safe for our community, but the city employees too. We have a duty to provide a safe working environment for them.

Mr. Gillenwater said he does recognize that right and she has taken that action. He would advise the council not to meet today because it is not necessary. If you can provide notice to the public, they should be allowed to attend the meetings. Public Access Counselor said you can protect the community, but you can't prohibit access to the meetings. Mr. Weber said no one has suggested to the public not come to meetings. What we have done in the executive order is to encourage people to watch it virtually and people can submit public comment or testimony to public hearings or meetings. Mayor Hodges said these issues are in the executive order issued by our governor on March 16, 2020. It also allows one member to attend a meeting and the others by phone. If the governor thinks it is that serious and is allowing a waiver of the public access requirements, then it is in reason that we do the same. There are no citizens in the audience today. If we suspend this meeting, then we must get together in 48 hours and it could cause the potential spread of this virus. This executive order allows city workers to receive their pay even if they can't come to work or work remotely. Councilman Cox said this is unprecedented and he appreciates Council Attorney's Gillenwater's advice. He does not have an issue going forward with the meeting. Mr. Gillenwater said this could be challenged and the council needs to decide if this an emergency. Mayor Hodges said she is the executive authority and only the executive authority can call an emergency meeting and she has done that. Council Attorney Gillenwater said there is nothing in this resolution that the Mayor has not already done. City Attorney Weber said it is an emergency and this resolution provides city workers their pay so city services will continue. The economy will take a hit from this and will allow us to cooperate in the face of a potential crisis. Council Attorney Gillenwater asked if this resolution has everything the executive order has in it. City Attorney Weber replied it does. Council Attorney Gillenwater asked then why is it an emergency meeting. Mr. Weber said if you want to come back in 48 hours, you can. Council Attorney Gillenwater said he did not get a copy of the resolution. He said Councilman Hester gave him one an hour before this meeting. City Attorney Weber said he sent him one last night after they talked. Councilman Cox said some people watch every penny that goes through city hall and some people may say why are they getting paid because we're not. Mayor Hodges said if some council members are uncomfortable paying city workers. That is your decision. Councilman Cox said that is not what he is saying. Mayor Hodges at this moment we are working on the legality of this meeting. She has looked at the Indiana Code read chapter five and the Indiana Municipality Manual and read Governor Holcomb's executive order that was issued on March 16, 2020. Consulted with the city attorney and we can take this action. Just because the council attorney did not receive this in a timely fashion. The council attorney is not the appointed city attorney. Councilman Cox said the city attorney told him he would send it to the council attorney. Mr. Weber said he did send it and to all council members and the council attorney. If he didn't get it, he could have called, and he would have sent it out again.

City Attorney Weber said we can call a recess and come back in an hour rather than doing a meeting in 48 hours. Council Attorney said you are not allowed to talk about this during a recess. Councilman Cox said because we did not publically post this are people going to think we are trying to sneak something through. Mayor Hodges said this meeting is being live streamed right now. Councilwoman Jackson said some people do not have Facebook especially the elderly. Mayor Hodges said that is the ones she is trying to protect. Councilwoman Jackson said she is not disagreeing on it. Councilman Cox said he does not disagree.

Mayor Hodges asked if they want to recess and call this meeting again and come back in an hour or however long. Do you want to adjourn the meeting then publish it and come back in 48 hours? Council Attorney Gillenwater said since this order is in affect for 7 days then you don't have to come back in 48 hours. Mayor Hodges said the next 14 days are the most critical in stopping the spread of this virus. If we finish this today, there is no reason to have any meetings in that 14-day period. We are not meeting again until April 06, 2020. This is what the medical people, the Indiana governor and the president are urging for us not to come together for the next 14 days. Councilman Cox said he would like to go forward and get this taken care of today. Councilwoman Jackson said she feels the urgency and asked if there are several employees it would affect if we don't do it before the 48 hours. Mayor Hodges said the council ultimately must approve the payroll claims.

Mayor Hodges said the last thing she needs is a part-time hourly or a full-time hourly employee coming to work. Who are showing symptoms because they are afraid, they won't get paid. They must feed their family and will come to work sick. This way ensures they can stay home, still get paid and pay their bills. It is in the budget and it will be considered paid administrative leave. The council is the voting body and she doesn't think they should wait to come back in 48 hours. Mayor Hodges said she will print the code and the executive order from the governor so they can review it. She said she would not be doing this if she thought it was illegal. Councilman Cox said he did not say it was illegal, not at all. Councilwoman Jackson she works in another public office and they have shut their doors and as much respect as she has toward Council Attorney Mike Gillenwater, she is ready to proceed with it. She doesn't want to take chance on taking this virus home to her family. We will come back and do a resolution when this emergency is declared over by Indiana Governor Holcomb.

Councilman Cox made a motion to approve Resolution 2020-R-3 that confirms the Executive Order that is in effect and will remain in effect until the COVID-19 virus is declared to be over by Governor Holcomb, seconded by Councilwoman Jackson. Approved 5-0.

Adjournment

Councilman Cox made a motion to adjourn, seconded by Councilman Steele. Approved 5-0.

Treva E. Hodges
MAYOR, TREVA HODGES

3-18-2020
DATE

ATTEST:

Donna S. Coomer
CLERK TREASURER, DONNA S. COOMER

3-18-2020
DATE