

City Council Meeting Minutes

**May 26, 2020
Electronic Meeting
6:00 PM**

Call to Order – Mayor Stolzmann called the meeting to order at 6:00 p.m. **Roll Call** was taken and the following members were present:

City Council: ***Mayor Ashley Stolzmann
Mayor Pro Tem Dennis Maloney
Councilmember Kyle Brown
Councilmember J. Caleb Dickinson
Councilmember Deborah Fahey
Councilmember Chris Leh
Councilmember Jeff Lipton***

Staff Present: ***Heather Balsler, City Manager
Megan Davis, Deputy City Manager
Rob Zuccaro, Planning & Building Safety Director
Dave Hayes, Police Chief
Megan Pierce, Economic Vitality Director
Meredyth Muth, City Clerk***

Others Present: ***Kathleen Kelly, City Attorney***

Mayor Stolzmann noted that because of the COVID-19 emergency the meeting is being held electronically. She gave information on how the meeting process will work and directions for those dialing in on how to participate when it is time for public comments.

RESOLUTION NO. 36, SERIES 2020 – A RESOLUTION AUTHORIZING THE TEMPORARY CLOSURE OF PORTIONS OF MAIN STREET IN DOWNTOWN LOUISVILLE FOR OUTDOOR DINING AREAS (EXPANDED OUTDOOR DINING PROGRAM)

Director Pierce stated this is a proposal for the closure of Main Street for an expanded summer dining program. The local restaurants have been severely impacted with the closure requirements of the COVID 19 pandemic. New regulations allow them to open for indoor seating tomorrow however strict social distancing requirements are in place including extra spacing of tables and sanitization requirements. The proposed closure would allow restaurants to expand into the street to allow for more seating capacity while still meeting those rules.

Director Pierce noted there are four component of the program:

- Closure of Main Street to vehicular traffic for an extended period;
- Designation of curbside take-out areas for Downtown food and beverage establishments;
- Potential “food hall areas” in City-owned parking lots; and
- Streamlined process for food and beverage establishments outside of Main Street to designate additional outdoor seating capacity.

Staff is recommending the closure of Main Street from Elm to Walnut leaving the east-west streets open. The start and end dates of the program have not yet been determined. The closure would not commence until all State guidance has been finalized and all participating businesses have been approved. At this time we are seeking a 24/7 closure, but the hours of operation will be further refined. The annual Downtown Patio Program, which deploys approximately 26 12-foot patios as “parklets” on Main and Front Streets between late April and early November, is unfortunately not feasible with meeting physical distancing needs. The exact layout will be determined when we know which restaurants will be participating.

Staff is asking for approval of the closure and administrative ability to approve the street layout and other details. The only hesitation restaurants had about the street closure was where to have curbside pick up areas. Restaurants are really dependent on take out right now so the layout needs to include access for people to pick up those orders.

The potential for food halls will be reviewed once the closure is fully in place and then staff can decide if the food halls are needed. The food hall concept would require more work from the City for oversight and sanitization and other details will need to be worked out if this moves forward.

Director Pierce noted expanded seating is not just for Downtown food and beverage establishments. The City Clerk’s office has already been reaching out to those establishments with liquor licenses about the process to add seating on sidewalk areas and in parking lots. Staff will assist food and beverage establishments in other areas with site plans, determining the number of tables and required spacing, and ensure there is appropriate emergency access and fire lanes. Please note that for these businesses, they will need to have proof of permission to use any adjacent area; if the establishment is in a strip mall with shared parking, they will need to obtain permission from the property owner.

Staff will create a communications plan for this program and align that with all current safety rules.

While many details will have to be worked out, staff is confident this program can be successful and staff recommends approval of the resolution.

Mayor Pro Tem Maloney asked how handicap parking will be addressed. Director Pierce stated the details have not been solidified but the layout will need to include handicap accessibility for both parking and table access.

Mayor Pro Tem Maloney asked how many downtown businesses will be included in this plan. Director Pierce stated most all have stated they support the program, including retail stores, but final participation is yet to be determined.

Councilmember Leh asked if Fire and Police had been involved in this discussion. Director Pierce stated they have been involved and feel it is all workable. As the layout and details are confirmed public safety will continue to be involved. Councilmember Fahey agreed emergency access must be considered.

Councilmember Lipton asked if any changes are needed to the sign code to support this. Director Pierce stated the City is currently allowing some flexibility in temporary signs for the next few months and that should be sufficient.

Public Comments

Mark Cathcart, 1763 Sweet Clover Lane, stated he would like bicycle parking included in the layout and he asked why a closure can't be done on Front Street as well.

CJ Roffis, Eyeworks, stated his business would be heavily impacted by this and he does not support the closure in front of their office. He stated he needs the parking open for his elderly patients. He asked that the block south of Pine Street not be closed. He stated a closure will cost him thousands of dollars.

Sarah Lynch, 541 Adams Avenue and owner of Assorted Goods, stated she supports the closure noting parking problems could happen but it would be offset by drawing people to downtown.

Rick Kron, President of the DBA, stated the DBA is very interested in this and they have been working closely with the businesses downtown and almost everyone is in support of this. He suggested an end date for the program be as late in the year as possible. He hopes the DBA can work with Eyeworks to accommodate them.

Erica and Jeremy Carlson, 929 La Farge Avenue, stated they both support the closure.

Mayor Stolzmann noted the Council has received a number of comments from residents and those have been included in the public record.

Councilmember Leh stated he supports the closure and giving staff the leeway to determine the details.

Councilmember Leh moved to approve the resolution; seconded by Councilmember Lipton. Councilmember Leh and Councilmember Lipton agreed to an end date of September 30 or until lifted by City Council

Councilmember Dickinson supports the resolution and wants staff to have flexibility to work out the details to make this work. He stated he knows this will impact the neighbors and thanked them for their continued support.

Mayor Pro Tem Maloney stated he supports the resolution and thinks it is a great idea. He noted that approving this for 2020 does not set a precedent for 2021.

Mayor Stolzmann stated she supports this to help the restaurants and to help them reopen in a safe way. She agreed it won't be easy for everyone but feels it is what is needed now. Councilmember Fahey agreed.

Councilmember Dickinson gave a friendly amendment to make the end date October 5 so it includes a full week. Councilmember Leh and Councilmember Dickinson agreed to the amendment.

Roll Call Vote: motion passed by unanimous roll call vote.

RESOLUTION NO. 37, SERIES 2020 – A RESOLUTION AUTHORIZING APPLICATIONS FOR TEMPORARY MODIFICATIONS OF LIQUOR LICENSED PREMISES TO BE ADMINISTRATIVELY APPROVED

Clerk Muth stated that staff anticipates many of the local restaurants may want to expand their licensed premises into parking lots or streets to help give them additional seating that meets social distancing requirements during the COVID-19. A restaurant cannot extend its liquor service area outside of its defined premises without approval from both the Local Licensing Authority and the State Liquor Enforcement Division

In normal circumstances, the temporary modification of premise application is submitted to the City Clerk's Office. Staff holds the application until the next Local Licensing Authority (LLA) meeting and once approved by the LLA the application is sent to the State for their approval.

The proposed resolution would change this process to allow the Secretary to the LLA to approve temporary modification of premises applications administratively without a hearing from the LLA. Should the Secretary deny an application, the applicant may request a hearing in front of the LLA. This would significantly shorten the time it takes to get local approval for such an application.

Councilmember Fahey stated her support.

Mayor Pro Tem Maloney asked if there would be an end date for this change. Muth stated as written this is a permanent change, but Council can put in an end date if desired.

Councilmember Leh stated he supports an end date in the resolution, perhaps tied to the emergency declaration. Councilmember Lipton agreed.

Public Comments – None.

Rick Kron, President of the DBA, stated he supports this resolution to give businesses more clarity and efficiency in this process.

Mayor Stolzmann stated she supports the resolution as written. The change would give staff the ability to act quickly on what are routine applications in an administrative process. She feels the permanent change makes sense.

Councilmember Leh moved to approve the resolution, Councilmember Dickinson seconded.

Mayor Pro Tem Maloney stated he prefers an end date as this is being done specifically to address the pandemic so it should align with that.

Mayor Stolzmann made a friendly amendment to strike the second whereas to remove the discussion of the change being made for the pandemic. Councilmember Leh did not agree to the motion.

Councilmember Lipton stated he is supportive of an end date.

Councilmember Dickinson stated the end date should be far enough out to cover the length of the pandemic emergency.

Councilmember Leh made a friendly amendment that the resolution end 30 days after the Council lifts the State of Emergency, Councilmember Dickinson agreed to the amendment.

Motion passed by unanimous roll call vote.

Members decided to switch the next two items and discuss in-person meetings first.

DISCUSSION/DIRECTION – CONSIDERATION OF IN-PERSON MEETINGS DURING COVID-19 RESTRICTIONS

Clerk Muth stated staff and the Legal Review Committee have been looking into what options there are for holding public hearings during the COVID-19 outbreak while there are strict limitations on in-person gatherings. At this time, staff plans to hold meetings electronically for the foreseeable future as the Safer at Home regulations ask people to

minimize the number of in-person meetings. She noted that legislative bodies are exempt from the 10 person limit.

After considering a large number of ideas and requirements staff is recommending that when the time comes for in-person hearings they be broadcast meetings (Channel 8 and web stream) that also have a phone-in option for public comments. Staff has ordered the equipment necessary to broadcast from the Recreation Center should Council Chambers be too small a room to use.

Staff looked closely at if a Zoom component could be integrated into an in-person meeting and determined there are technical issues. The phone-in option, however, allows people to stay home and watch the meeting and still participate in the meeting. This option is one way to make people feel safe while still participating. Additionally, if the Council were to meet in the Recreation Center (in either the Brooks/Crown Room or the Gym) there would be enough space to allow some people to participate in person.

Using this option all of the standard Council processes will still apply. Public comments would be limited to specific times on the agenda and everyone who is interested can have a chance to speak (either in person or on the phone) for three minutes.

Many logistical details still need to be worked out for this and staff does not foresee a shift to this process in the immediate future.

It should be noted that having City Council meetings in-person does not resolve the issue regarding those items that are subject to referendum. The current Safer at Home public health order does not prohibit circulation of referendum petitions, but recommended social distancing practices may present practical difficulties. Council should take this into consideration when the City is ready to proceed with in-person meetings.

The Legal Review Committee discussed this item at their May 20 meeting and recommended the City Council consider the in-person meetings for public hearings, except for those matters subject to referendum.

Councilmember Leh stated the Legal Committee really did not have a strong recommendation but wanted the Council to discuss this quickly.

Councilmember Brown stated he hears from residents who do not have the technological ability to join electronic meetings; they would prefer an in-person option. In-person meetings would enhance transparency and allow work to continue.

Councilmember Fahey noted many people really like the electronic meetings so they don't have to attend in-person.

Councilmember Brown stated the Committee would support in-person meetings for those items subject to referendum once petition circulating could happen safely.

Councilmember Lipton noted petition circulation is not prohibited; however, it is not recommended due to health issues. He asked if municipal initiatives could move forward electronically as the governor has allowed state ones to. City Attorney Kelly stated that the City's home rule charter does not allow for electronic circulation unless or until the General Assembly changes those regulations in Title 31.

Councilmember Lipton stated the Council can't indefinitely postpone land use hearings that are subject to referendum.

Councilmember Leh stated the Council needs to address public meetings for non-quasi-judicial items first and then address those subject to referendum.

Mayor Stolzmann suggested having in-person meetings for all public hearings and for all other items continue to meet electronically.

Councilmember Lipton asked what exactly is included in public hearings. City Attorney Kelly stated generally it is those items that require prior notice to the public, it is mostly land use, historic preservation items, and ordinances.

Councilmember Lipton stated unless there is a real urgency he is very reluctant to meet in person. He is concerned about inadvertent exposure to the virus. He would like to wait and see what happens over the next 30-60 days. Any item that can be addressed electronically should be.

Councilmember Dickinson stated he supports finding a way to have having in-person meetings when needed.

Mayor Pro Tem Maloney stated he wants to see City business continue; but we can't rush the process back to in-person meetings until the referendum question is settled.

Councilmember Brown stated we need to find a way forward for in-person meetings when necessary.

Public Comments

Mark Cathcart, 1763 Sweet Clover Lane, stated he is a person with underlying conditions and he has concerns about attending an in-person meeting, but he also has a great issue with the electronic meetings and feels there is no meaningful participation for the public that way.

John Leary, 1116 LaFarge Avenue, stated he is concerned about those items subject to referendum. While signature gathering is not prohibited it is highly discouraged for health reasons. He stated the right to referendum is constitutional. He noted that property rights

are important but he feels that shouldn't trump health and constitutional rights. The City should see if there is a way to resolve these issues.

Mayor Stolzmann wanted to clarify for everyone that if there were in-person meetings there would still be a way for people to watch from home and participate by phone. She stated she supports an in-person option for anyone who wants to attend that way with an electronic option for those who don't. She stated she supports all public hearings be held at in-person meetings and continuing with electronic meetings for topics without a public hearing.

Councilmember Lipton stated his concern that if some Council members are in person and some at home it would leave those people at home on unequal footing. We should try to handle as much business as possible electronically. He added things could change quickly in the next few months.

Mayor Stolzmann stated she supports an in-person option for public hearings and she doesn't support moving forward with public hearings without that option.

Councilmember Lipton stated many items with public hearings can take place electronically. He strongly objects to requiring in-person meetings for any public hearing item.

Councilmember Leh asked the City Attorney if an in-person meeting is required for public hearings. City Attorney Kelly stated that in her interpretation, neither the Charter nor Code does requires public hearings be held in-person.

Mayor Stolzmann stated she feels to be totally accessible there needs to be an in-person option.

Councilmember Leh stated this issue needs to be resolved soon. We take public participation very seriously and want to meet the needs of everyone. Councilmember Leh asked City Attorney Kelly to research if the City has a legal duty to hold public hearings in-person.

Mayor Stolzmann asked members who would be comfortable meeting in-person.

Councilmembers Brown and Councilmember Dickinson were comfortable to meet in-person.

Councilmember Lipton stated he is not comfortable meeting in-person as he is in the high risk category for COVID-19. He noted three members of Council are in this position and he finds it discriminatory the others would meet in-person without them.

Mayor Pro Tem Maloney stated he is cautious of in-person meetings as well but we need to resolve this to keep the City's business moving ahead.

Councilmember Fahey stated she too is high risk; she would be willing to meet in-person only if there was no other way to hold the hearing.

Councilmember Leh stated all members of Council have an equal voice and he is concerned there would be some kind of stigma against those not attending in-person. He stated whether or not to have in-person meetings should be driven by what the law requires. He would like to see what the City Attorney's findings are before proceeding.

Mayor Stolzmann stated she does not think the electronic meetings are a reasonable replacement for in-person meetings. There are audio and technical issues with the electronic meetings. Some other Councils are making in-person meetings work. There are other alternatives. We can't continue with only electronic meetings until there is a vaccine. We need to find an in-person option.

Councilmember Dickinson stated this may continue for 18 months so we need to figure it out. We have to figure out what an acceptable level of risk is and what an acceptable meeting format is and how to make sure everyone is on equal footing. We need to keep moving the conversation forward.

Councilmember Leh noted this disease has a disparate impact on people over 60 and we need to figure out a way to involve everyone.

Members agreed to send this back to the Legal Committee for additional discussion and to bring a recommendation.

RESOLUTION NO. 38, SERIES 2020 – A RESOLUTION AMENDING PROCEDURES TO BE UTILIZED FOR QUASI-JUDICIAL HEARINGS AT MEETINGS CONDUCTED BY ELECTRONIC PARTICIPATION

Mayor Stolzmann introduced the item. City Attorney Kelly stated the Council previously adopted Resolution No. 30 which authorized quasi-judicial meetings to be held by electronic participation. Following that there was some desire by staff to seek Council clarification regarding which types of specific applications and hearings the Council wanted to be held by appointed bodies and the Council.

This resolution specifically enumerates the types of applications and what types of hearings can be held. The other addition is new information about accessibility to meet ADA requirements and requests for accommodations for those who need them.

The resolution gives discretion to the City Manager, the Mayor, or chair of an appointed body to determine if technological or other issues are preventing proper due process at an electronic hearing. If that is the case, the hearing will be vacated or continued to a later date when it could be held at an in-person meeting.

Public Comments – None.

Councilmember Brown suggested one amendment to the resolution: adding to Section 1A1 that Public Meetings before City Council held by Electronic participation under this Section 1. A. 1. must also include an in-person participation option. He stated he feels strongly that people need an in-person option for attending public hearings.

Councilmember Brown moved for approval with the one amendment he suggested; Mayor Pro Tem Maloney seconded.

Councilmember Lipton was concerned this is overly broad as it requires all land use applications, even minor ones, have an in-person component.

Councilmember Leh asked if Councilmember Brown wants to add this as he feels the in-person component is legally required. Councilmember Brown stated he is suggesting the change because he hears from people in the community that they want a way to comment in-person on land use cases. It is important to them to have that option.

Councilmember Leh stated he has concerns with Section 1A2. He does not want items subject to referendum to be heard in an electronic meeting by either the City Council or the Planning Commission. He would also like more discussion on accessibility for electronic meetings and additional procedures for quasi-judicial hearings.

Mayor Stolzmann stated she supports the motion. The resolution doesn't solve the problem of in-person meetings but does expand the ability to conduct business once that is resolved. She noted that if the Council doesn't approve this we can't address any of these types of business. It is a good move in the right direction.

Mayor Pro Tem Maloney stated he supports this resolution as it clarifies how we handle certain items and having public input is at the heart of our Charter.

Councilmember Lipton stated that as amended this is saying that all land use applications must be held in-person and with an electronic component and if that is the intent it is not clear nor is it good policy. He stated in his ward he has not gotten requests for in-person meetings to resume. He suggested it go back to Legal Committee for more discussion.

City Manager Balser stated staff brought this to get clarification not just for quasi-judicial hearings before City Council but also that those could happen at Planning Commission. There are meetings in the queue for Planning Commission and staff would like it to be clear we can have those meetings electronically. What staff heard previously is that those items not subject to referendum should be able to come forward through the electronic process and this would clarify that.

Councilmember Fahey stated that at both the earlier Council meeting and the Legal Committee meeting the goal was to make sure that quasi-judicial items, not subject to

referendum, could come through the process with electronic meetings for the Council and boards and commissions.

Councilmember Fahey made a substitute motion to approve the resolution as originally presented without Councilmember Brown's amendment; Councilmember Dickinson seconded the motion.

Councilmember Dickinson stated he agrees with the goal of allowing items to proceed with electronic meetings for all items not subject to referendum.

Councilmember Leh gave a friendly amendment to approve the resolution as written but insert in Section 1A2 the words "and Planning Commission" so the paragraph reads: "Land use applications the final decision regarding which is subject to referendum: Public hearings before all Appointed Bodies may be held by Electronic Participation, but City Council and Planning Commission hearings must be held at an in-person meeting. These types of applications include, but are not limited to, zoning and rezoning applications, including applications for General Development Plans and amendments thereto."

Councilmember Fahey accepted the amendment; Councilmember Dickinson accepted.

Councilmember Brown stated he still supports that all land use applications have an in-person component.

Roll Call Vote: motion passed 4-3 (Councilmember Brown, Mayor Stolzmann, and Leh voting no).

ADJOURN

Members adjourned at 9:44 pm.

Ashley Stolzmann, Mayor

Meredyth Muth, City Clerk