



COUNCIL MINUTES

June 19, 2020

The City Council of the City of Mesa met in a Study Session Meeting via a virtual format streamed into the City Manager's Office conference room, on June 19, 2020 at 2:02 p.m.

COUNCIL PRESENT

John Giles*
Mark Freeman*
Jennifer Duff*
Francisco Heredia*
David Luna*
Kevin Thompson*
Jeremy Whittaker*

COUNCIL ABSENT

None

OFFICERS PRESENT

Christopher Brady
Dee Ann Mickelsen
Jim Smith

(*Council participated in the meeting through the use of video conference equipment.)

Mayor Giles conducted a roll call.

1-a. Discuss mitigating the spread of COVID-19 by requiring the wearing of face coverings in public places.

Mayor Giles stated a few days ago Governor Ducey's press conference reviewed where the State of Arizona is with COVID-19. He remarked due to the fact that the pandemic has become more and more prevalent in Arizona, the governor and state health director made a compelling case for wearing masks and authorized cities to adopt mask requirements.

Mayor Giles announced since that press conference, there has been a steady and dramatic increase in the number of cases affecting Arizonians. He reported a few months ago when the City was shut down, the likelihood of contracting the virus was much smaller than today.

Mayor Giles expressed his support for issuing a proclamation consistent with what surrounding communities are mandating, which is the use of face coverings in certain situations while tailoring the proclamation to reflect the priorities of the Mesa City Council and the community. He pointed out that Mesa can look at the models of other cities that have already adopted face coverings, including Gilbert, Tempe, Scottsdale, Phoenix, and Tucson.

Mayor Giles commented the proclamation can be drafted quickly, and suggested an effective date of Monday, June 22, to allow members of the community to prepare and educate themselves on the requirements.

Mayor Giles disclosed the primary purpose is to regulate the inside of public places, like grocery stores, where social distancing is difficult. He commented other facilities involved will be Mesa

facilities and public transportation. He mentioned outside activities will be more lenient, but when there are groups of people that are not members of the same household, then face coverings are important. He continued by saying individuals that have medical issues, and people with mental challenges or developmental disabilities do not have to comply. He said there are specific Centers for Disease Control and Prevention (CDC) guidelines that identify groups where face coverings are not appropriate.

Mayor Giles suggested there be an exclusion to face coverings while eating and drinking in a bar or restaurant, but while waiting in line or congregating in areas where you are in close proximity to other people you must wear a face covering.

Mayor Giles advised the Mesa Public Schools (MPS) Governing Board are capable of setting policies for their schools and does not feel the City should regulate them. He mentioned that the governor's order specifically identified churches as necessary and essential and excluded them from the regulation. He said he struggles with the idea of whether the City of Mesa should regulate church activity because church gatherings seem like the perfect place where the spread of the virus could occur and he would like discussion on the topic of regulating churches.

Mayor Giles listed other areas where requiring a face covering does not make sense, including medical and dental procedures or while swimming. He encouraged people to continue exercising outside with social distancing, adding the need to wear a face covering when entering a health club or interacting in close proximity to others; but if proper social distancing is adhered to, then remove the mask while exercising. He discussed articles that state wearing a face covering while vigorously exercising can elevate your respiratory rate and heart rate, which may not be healthy.

Mayor Giles advised in work places where people are interacting with the public, both the customers and employees should wear face coverings; however, if employees are alone or are able to socially distance, there should be allowances for not requiring face coverings. He recommended excluding vehicles and leaving that choice to common sense if an individual feels they are at risk.

Mayor Giles remarked that other cities have exclusions in their orders for Public Safety workers and feels Mesa should follow their lead by allowing the police and fire chiefs to make those decisions.

Mayor Giles addressed the definition of a face covering, which includes items such as a scarf, bandana, and other inexpensive alternatives.

Mayor Giles asked Council for their opinions on whether the order should expire or be left in place until further action is taken. He voiced his opinion that many people will be intimidated and offended that government is stepping into their lives and mandating a face covering and feels the City should use a soft touch on enforcement, with the emphasis on education and health risks.

In response to a question posed by Vice Mayor Freeman regarding whether Council will be asked to make a motion and vote on the proclamation after the discussion, City Attorney Jim Smith stated under State statute, after an emergency declaration the mayor governs through proclamation, adding ultimately the decision is made by the mayor. He explained the item is on the agenda for discussion and to provide information to the mayor to assist in his decision.

Mayor Giles elaborated that his intention is for the proclamation to reflect the consensus of Council.

Vice Mayor Freeman stated he understands how the basic disease transmission happens and indicated support for protecting Mesa residents; however, struggles with how to balance the government mandate. He commented that as an adult he can teach and educate his family on preventing the spread of COVID and a governing agency should not have to make these decisions for the members of the community, which can appear to be government overreaching. He proposed using a simple statement that covers education, the importance of keeping a mask available, and social distancing. He prefers no police enforcement, a time duration on the proclamation, and that businesses self-regulate.

Councilmember Thompson agreed with Vice Mayor Freeman in that he struggles with mandating and regulating businesses and feels it should be left up to the business to determine if patrons are required to wear masks. He encouraged treating Mesa citizens with decency and common sense by believing that citizens will take personal responsibility for themselves. He disagreed with government mandating masks. He reminded individuals to wash their hands, continue with social distancing, and wearing a face covering when needed.

Councilmember Luna advised he supports the notion of the proclamation to the community. He encouraged using the terms “face covering” instead of “masks,” and “physical distancing” rather than “social distancing.” He remarked the City should incorporate the Department of Public Health face covering guidelines that were issued on May 21 and summarized those guidelines. He stressed that Public Safety employees and emergency responders need to wear face coverings when engaged in essential business, along with employees of business establishments, and that employees should be screened for symptoms. He commented that education is the key by having signage, public notices, and social media posts regarding sanitation guidelines; and the penalty for non-compliance should start with a verbal warning which can be escalated to a citation if needed. He said the City needs to err on the side of caution and feels the Department of Public Health should determine the expiration on the mandate.

Councilmember Heredia echoed the thoughts voiced by Councilmember Luna and Mayor Giles, adding nobody truly understands the virus and every week that goes by more information is obtained. He pointed out that everyone is anxious to return to normal routines, however, residents of Mesa need to keep in mind that Arizona is under a public health crisis. He stated all the CDC guidelines need to be followed to limit the spread. He expressed his support for joining neighboring cities in mandating face coverings and that Council should come back and have further discussions as more details become available regarding the timeline because there are a lot of unanswered questions. He emphasized the City should be leading with education and not criminalizing non-compliance.

Councilmember Duff indicated support for the proclamation because Arizona’s COVID numbers are increasing daily and hospitals are close to emergency protocols. She remarked face coverings are a great compromise to shutting down; and if everyone is wearing them, that will soon become the norm. She agreed with the notion of only requiring face coverings when individuals cannot keep a six-foot distance, whether indoors or outdoors. She stated she prefers to receive a legal recommendation on how to handle citations for non-compliance. She added that the duration of the proclamation should remain in effect until Arizona is no longer in a state of emergency.

In response to a series of questions from Councilmember Whittaker, Mayor Giles replied the mandate is targeting indoor public situations. He stated the CDC recommendation is for cloth face coverings, including bandanas, scarfs, and other affordable alternatives; adding the model is not to provide disposable medical masks every time someone walks into a business. He

acknowledged that the City could coordinate resources for residents who do not have access to a face covering.

Councilmember Whittaker suggested stimulating small businesses by partnering with local manufacturers to provide masks locally.

City Manager Christopher Brady advised the City is behind in keeping up with the face covering inventory needed for Public Safety and the general workforce. He mentioned the City is in the process of trying to build up the inventory in anticipation of having more employees coming back to the office, but the process will take months. He stated face coverings are eligible for the CARES Act funding, but he pointed out that the City does not have the procurement logistics to provide face coverings for every business and does not want to create that expectation.

Councilmember Whittaker suggested issuing a \$10 credit on residents' water bills to help purchase a face covering to adequately protect themselves.

Mayor Giles stressed there are other ways to comply with the mandate without having to purchase a face covering, and there are a lot of charitable people in Mesa who are manufacturing and donating items. He indicated Mesa CARES can be a resource for callers that are requesting a face covering.

In response to a question from Councilmember Whittaker regarding individuals who have a permit to carry a concealed weapon and whether wearing a mask in that situation is considered a felony, Mr. Smith said he would review the statute and provide an answer. He mentioned many cities have taken the position that due to the nature of national, state, and local emergencies being declared that cities have the right to mandate facial coverings. He added most, if not all, proclamations or orders have exclusions for religious activity.

Councilmember Whittaker expressed the opinion that if the mandate is not enforceable, then the process seems pointless to implement. He questioned whether the City is tracking items like the amount of Intensive Care Unit (ICU) beds in use?

Mr. Brady stated a daily email from the Emergency Operations Center (EOC) is sent that includes a report on hospital bed and ICU bed capacity in the Southeast Valley. He advised the most recent report suggests there are available hospital beds in the Southeast Valley.

In response to a question from Councilmember Whittaker regarding whether the City is rolling back the phased reopening of City services, Mr. Brady reported at this point the City is continuing with the plan to reopen the Red Mountain Recreation Center and swimming pools with health and safety guidelines.

Mayor Giles expanded by saying the decision to roll back the phased reopening is a question for Council. He indicated the threat of contracting the virus today is greater than a couple months ago when the community was in quarantine. He stated the proposed regulation for face coverings is one alternative to avoid another quarantine. He said the goal is finding a smart way to help stop the spread of the virus without shutting down bars and restaurants, which would cripple the economy.

Councilmember Whittaker inquired whether the City could use the CARES dollars to provide registered businesses in Mesa a touchless thermometer to help determine if someone is infected with the virus and giving the business the ability to refuse service?

Mayor Giles informed Councilmember Whittaker the effectiveness of a touchless thermometer is a good question for a medical expert, considering there have been recent reports of non-symptomatic carriers unknowingly spreading the virus.

Mayor Giles mentioned that while the governor's mandate came short of requiring face coverings, there is a requirement that every business in Arizona develop a policy with regard to face coverings, and Mesa's proclamation is a step beyond what the governor has suggested. He expanded by saying the face coverings requirement would be for children six years of age and older.

In response to a question from Mayor Giles regarding whether the City can regulate houses of worship and religious organizations, Mr. Smith remarked the governor's original order specifically identifies religious activities as an essential activity, and in the most recent order there is one paragraph that allows for municipalities to provide for face coverings. He said he is uncertain how the two will integrate. He recommends having an exemption for religious activity which will follow what other cities have done.

Mayor Giles asked Council to share any further thoughts or recommendations that have not been discussed.

Councilmember Luna remarked on a conversation he had with MPS who are seeking guidance from the City in terms of how to implement these policies in the district to protect teachers and students.

Mayor Giles said the proclamation could say the City supports MPS but defers to the school districts to implement the policy to help lower the curve. He added he feels a sense of urgency not only because of the higher numbers, but also because MPS will be going back to school in less than 50 days.

Mayor Giles affirmed the face covering mandate will be difficult and inconvenient; however, due to the increase in COVID cases, he feels that Council needs to exercise leadership.

In response to a question from Vice Mayor Freeman regarding whether the enforcement discussed suggests that a business could receive a citation and end up in court, Mayor Giles answered the business will be motivated to be in compliance if there is a chance of receiving a citation. He said the question would be whether the citation is a civil penalty or a criminal penalty.

Vice Mayor Freeman indicated he is not in favor of fining businesses and inquired who is going to be the authority on fines?

Mr. Smith advised in past executive orders from the governor the fine has been a Class 1 misdemeanor and the police have issued the citations. He stated consistent with the executive orders from prior proclamations, the City would first warn and educate before citing. He outlined the goal is not to obtain convictions or fines, but to facilitate protecting the citizens of the community by educating them.

Mr. Brady pointed out that after speaking to the police chief, the face covering mandate will be the lowest level call the police will handle and will only respond if there are staff available. He advised many times a sergeant will be able to work with the business by phone to make them aware of the proclamation. He explained the response will be focused on social media education;

and even if a police officer is dispatched, the encounter will be regarding what the business is supposed to do.

Vice Mayor Freeman stated his opposition to having any fine or enforcement of the mandate. He agreed with the idea of making phone calls to business owners to notify them of corrective steps and leaving enforcement to the business owner with personal accountability by the community. He inquired whether people with disabilities will be included in the exemption?

Mayor Giles concurred that individuals with physical, mental, and developmental disabilities will be exempt from the mandate.

Councilmember Thompson commented that each Councilmember was elected to represent the people of their districts. He stated overwhelmingly his constituents have communicated they do not support the mandate. He explained there is a big difference between asking someone to wear a face covering and mandating a face covering and does not believe Council should issue a mandate. He feels the governor came up with a plan for businesses to practice social distancing and how to protect patrons, but government should not be telling individuals what to wear and be penalized if they do not adhere.

Councilmember Duff emphasized that there are still a lot of questions and the City of Mesa is doing its best to respond to the pandemic. She expressed the opinion that if individuals are able to maintain six-foot distance, then face coverings are not necessary. She commented it is not uncommon for restaurants to have signs stating, "No shoes, no shirt, no service," and in this case face coverings are one additional measure to avoid a shutdown, which would be detrimental to the economy.

Mayor Giles explained that other cities have required face coverings when visiting gyms; however, in reviewing the research that has come out over the last few days, that does not seem like a good idea and feels there are ways to provide safeguards.

Councilmember Thompson pointed out the no shoes, no shirt, no service is not a federal law, that is a business policy.

In response to a question from Councilmember Heredia regarding whether the order from the governor states if there is no social distancing then face coverings should be used, Mr. Smith indicated he would have to review the guidelines, but does not believe that face coverings are mandated, just encouraged and recommended.

Councilmember Heredia stated there needs to be a common-sense approach to the health crisis solutions.

Mayor Giles thanked Council for their input, stating he will do his best to incorporate the suggestions into the proclamation. He added he does not relish the idea of putting additional mandates on the citizens of Mesa; however, statistics cannot be ignored, and the numbers are trending up.

2. Adjournment.

Without objection, the Study Session adjourned at 3:29 p.m.

JOHN GILES, MAYOR

ATTEST:

DEE ANN MICKELSEN, CITY CLERK

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Mesa, Arizona, held on the 19th day of June 2020. I further certify that the meeting was duly called and held and that a quorum was present.

DEE ANN MICKELSEN, CITY CLERK

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