

MINUTES OF THE RULES & ORDINANCES COMMITTEE
May 5, 2020
Online Broadcast Meeting

Present: Councilmembers Kepple, Neff, & Shachner

Also Present: Councilmember Bullock, Chief Dunphy, Assistant Director Swallow, Director Gelsomino, Captain Wilkins, Ian Andrews of Lakewood Alive, a couple members of the public, Clerk Bach, & Deputy Clerk Lascu taking minutes

Start time: 6:01 p.m.

AGENDA

Approval of the minutes of the February 18, 2020 Rules & Ordinances Committee meeting.

Chairperson Kepple made a motion, seconded by Councilmember Shachner to approve the minutes from the committee's last meeting.

A roll call vote was taken as follows:

Yeas – Kepple, Neff, Shachner

Nays – None

The motion passed. The minutes were approved.

Communication from Councilmember Kepple regarding face masks. (A motion will be made at the 5/4/20 General Meeting to refer to Rules & Ordinances)

Chairperson Kepple stated that the initial intended purpose for the night's meeting was to explore face mask rule development prior to May 12th retail opening statewide, however after getting feedback from residents, the city's legal team, and businesses, it became clear that more discussion was needed on the matter. These areas include: 1) the wearing of masks in businesses 2) the wearing of masks in communal residential spaces 3) the wearing of masks in public spaces (sidewalks, parks, etc.).

Chairperson Kepple posed the question as to whether home rule allows Lakewood to order stricter restrictions than the statewide Stay Safe Ohio Order. Assistant Director Swallow indicated that she initially thought it could be regulated further under home rule. After looking at the order, she determined that the city cannot regulate this, as it makes clear that a business owner cannot deny entrance to a customer for not wearing a mask, despite all retail employees being required to wear one.

Councilmember Shachner surmised as to how a rule requiring mask wearing would be enforced. He proposed adding an offense to the Lakewood Codified Ordinances under

criminal trespass. The offense would have to be under a state of emergency where a public health official has recommended the wearing of masks. Visible signage on a business requiring masks would be needed in order to make it some kind of trespass. These elements would make it a minor misdemeanor with a fine, with no jail time, however the penalty would increase with each offense. This would give business owners recourse to call law enforcement if needed and also gives them the discretion as to whether they want to allow people to enter without a mask.

Chairperson Kepple sought clarification on the statewide order and why Lakewood does not have the right to enact more restrictions.

Assistant Director Swallow interpreted the order to state that retail businesses cannot prohibit someone from wearing a mask. Vendors and patrons have been highly encouraged to use masks. She indicated that the intent of the order is to leave the choice of mask wearing up to individuals and businesses. She added that Lakewood cannot enact greater restrictions on liberties in a situation of statewide concern.

Councilmember Neff interpreted the order to read that it is the prerogative of the business owner to mandate masks and that they have the power to do so and enforce it. She added that businesses should offer them too. She agreed that the city cannot make anything more restrictive than the Governor's order. She agreed with the use of masks and believes them to be protective.

Chairperson Kepple inquired as to whether the language Councilmember Shachner discussed was needed to give businesses and the law extra teeth or is it already covered under trespassing language. Councilmember Shachner cited an example of how marijuana possession is penalized differently on the state and local levels. He added that the intent of the order was a compromise between those who do not want to be forced to wear masks and businesses that believe masks are necessary to stay safe. He noted some specific language pertaining to mask wearing would be helpful.

Chairperson Kepple stated that Council passed ordinances to restrict the sale of tobacco prior to further statewide restrictions, noting that there is precedent for more stringent local level laws.

Councilmember Neff found problems with enforcement of a mask law, as an individual entering a business could not be asked to divulge their health information under HIPPA.

Chairperson Kepple spoke about facial coverings in communal residential spaces, which she believed to not be addressed in the order. Members of the committee, Assistant Director Swallow, and Captain Wilkins cited issues with enforcement, as any case would put one resident's word against another. There were reservations against putting extra burden on law enforcement. It was proposed that landlords post signage to encourage mask wearing.

Director Gelsomino indicated that the Westerly Building has strongly encouraged residents to wear masks and have made them accessible. The Human Services Department has started providing masks to seniors with Health Lakewood Foundation emergency funding. Building management companies do not feel they can enforce the use of masks in common areas. It was noted however, that any time a senior is on city transportation they must wear masks per the policy of the city.

Chairperson Kepple stated she's hearing that it is unenforceable for the city to require masks in communal residential spaces and that private building management companies are finding the same thing. Education is the tool left to use to encourage people to wear masks in those environments.

Chairperson Kepple gave a brief overview of social distancing in public spaces, such as sidewalks and parks. Captain Wilkins noted that the Police Department has received a substantial amount of calls regarding social distancing. The police's biggest tool is mediation rather than ticketing in these situations.

Councilmember Shachner questioned whether identified unsanitary practices, such as not wearing a mask, could be cited as a nuisance. Assistant Director Swallow was unsure whether that could be done. Property owners could potentially require this under the ADA, but they should speak with their counsel on the issue. Councilmember Neff highlighted the importance of mediation, education, and signage. She expressed concern about creating a law with consequences when people are already worried during the pandemic. Director Gelsomino noted that provisions that provide guidance under this type of situation could be added into leases moving forward.

Chairperson Kepple inquired as to what educational resources and messaging can the city offer to residents. Chief Dunphy noted that the Fire Department has sent out flyers to the Westerly, Fedor Manor, and other buildings, looking to get the word out in a friendly way. He suggested a continued partnership between Lakewood Alive and the Chamber of Commerce to build a message highlighting the theme of everyone being in this effort together.

Ian Andrews gave an overview of communications that have gone out to Lakewood merchants. Many merchants want all of their customers to wear masks and other believe they would lose customers if they were to enforce mask wearing. He stated that the city should support merchants, but could be in a difficult position to do so.

Ms. Mary Gamon, a resident of the Westerly Building, indicated that there are lots of common areas in her building and that an individual cannot leave his or her apartment without running into others. She stated that people are not social distancing or wearing masks. She is worried for her personal safety.

Assistant Director Swallow committed to putting up COVID related information in regard to landlord-tenant situations.

Councilmember Shachner stated a desire for an ordinance with a punitive element in regard to mask wearing. He added that he does not want to leave business owners without any backup from the Police Department and Council. He noted that a security guard was shot in another state recently while trying to enforce the wearing of a mask.

Chairperson Kepple stated that there is a need to follow up on a mask wearing education piece that the city can put out. She adjourned the meeting without objection.

The meeting was adjourned at 7:02 p.m.