

City of Valdez

212 Chenega Ave.
Valdez, AK 99686



Meeting Minutes - Final

Tuesday, July 7, 2020

7:00 PM

Regular Meeting

Council Chambers

City Council

REGULAR AGENDA - 7:00 PM

I. CALL TO ORDER

Mayor O'Neil called the meeting to order at 7:01 p.m. in Valdez City Council Chambers.

II. PLEDGE OF ALLEGIANCE

City Council led in the Pledge of Allegiance to the American flag.

III. ROLL CALL

Present: 7 - Mayor Jeremy O'Neil
Council Member Ron Ruff (*telephonically*)
Council Member Susan Love
Council Member Sharon Scheidt
Council Member Jimmy Devens
Council Member Dennis Fleming (*telephonically*)
Council Member Alan Sorum (*telephonically*)

Also Present: 6 - City Manager Mark Detter
Assistant City Manager Nathan Duval
City Clerk Sheri Pierce
Deputy City Clerk Allie Ferko (*telephonically*)
Records Manager Shelley McMillen
City Attorney Jake Staser (*telephonically*)

IV. PUBLIC BUSINESS FROM THE FLOOR

Lynette Oliver, Valdez Adventure Alliance

Ms. Oliver updated Council on the results of the Ice Climbing Festival, the work beginning on Shoup Bay Trail, and the community service organization process.

V. CONSENT AGENDA

- 1. Approval To Go Into Executive Session RE: (1) TAPS Settlement Agreement (2) Pending Litigation (3) City Manager Evaluation**
- 2. Appointment to City Ports & Harbors Commission (Three-Year Term) - Mark Swanson**

MOTION: Council Member Scheidt moved, seconded by Council Member Love to approve the Consent Agenda.

VOTE ON THE MOTION:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION CARRIED.

VI. NEW BUSINESS**1. Appointment to City Library Board (One-Year, One-Month Term) - Multiple Applicants**

MOTION: Council Member Devens moved, seconded by Council Member Scheidt, to appoint Sherry Miller to the City Library Board for a one-year, one month term.

VOTE ON THE MOTION:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION CARRIED.

2. Approval of Valdez Public Health Mandate #003 - Requirement for Masks or Cloth Face Coverings

MAIN MOTION: Council Member Sorum moved, seconded by Council Member Devens, to approve Valdez Public Health Mandate #003 - Requirement for Masks or Cloth Face Coverings.

Mayor O'Neil outlined how testimony would be accepted during the meeting. Ms. Pierce stated twenty-two letters of testimony had been received by the City Clerk's Office. Sixteen were in support of mandating masks or cloth face coverings, five were in opposition to mandating, and one supported the mandate but were uncomfortable having to enforce it in their business. Ms. Pierce confirmed she forwarded each of the pieces of written testimony to City Council. Council provided consensus the letters did not need to be read into the record, but the authors and their stance should be.

Ms. Pierce read the following names into the record:

- Kathy Nielsen; in favor of the mandate, with concerns over enforcement
- Sharon Devens; in favor of the mandate
- Trish Raynor; in favor of the mandate
- Tara Yunker; in favor of the mandate
- Mary Corcoran; in favor of the mandate
- Candy Davis; in favor of the mandate
- Deborah Plant; in favor of the mandate
- Kaitlin Pabo-Eulberg; in favor of the mandate
- Dahlia O'Neil; in favor of the mandate
- Rod Morrison; in favor of the mandate
- Sara Irwin-Goudreau & Steve Goudreau; in favor of the mandate
- Donna Schantz; in favor of the mandate
- Linda Day-Guthrie; in favor of the mandate
- Ann Grande; in favor of the mandate
- Donna Lane; in favor of the mandate
- Kristina Duffy; in favor of the mandate
- Jerri Devens; in favor of the mandate
- Clint Nauta; in opposition of the mandate
- Tom Auble; in opposition of the mandate

- Jonathan Bailey; in opposition of the mandate
- Erin Nauta; in opposition of the mandate
- Lindsay Haase; in opposition of the mandate

Ms. Pierce stated no requests to testify via phone had been received. Mayor O'Neil invited public comment, requesting testimonies be limited to five minutes.

Valdez Resident Michael Johnson stated he opposed the mask mandate due to widespread misinformation. Mr. Johnson cited justification for his position based on information he obtained from the New England Journal of Medicine, the U.S. Department of Labor, the Inside Surgery Journal, the CDC website, the Department of State Health Services, the Henry Ford Hospital, and David Williams, MD. He expressed his desire for Council to look at all the facts before limiting citizens' liberty to choose.

Valdez Resident GiGi Obren stated she supported the mask mandate. She felt it was imperative to do everything possible to limit the spread of the virus, including wearing masks. She wanted the mandate to encourage people to wear masks to protect each other.

Valdez Resident Aaron Lee stated he opposed the mask mandate and felt it was unnecessary.

Valdez Resident Joe Prax stated he opposed the mask mandate. He cited numbers from the Anchorage Daily News. He stated Anchorage and Fairbanks were providing testing and felt the City could be doing more in that regard. He felt the enforcement aspect of the mandate was lacking and the community was expecting it to be enforced if it was passed. He asked how long the mandate would be in effect and what would be the purpose for the mandate. If the mandate was to prevent death, there were many other options which could be taken. He cited results of a survey done by the local school system. He stated there was a social cost to passing the mandate and the rest of the state would not be passing mask mandates.

Dr. Kathy Todd stated she supported the mask mandate, and expressed her concern over misinformation and misinterpretation of information. She cited the same article in the New England Journal of Medicine Mr. Johnson referenced during his testimony and interpreted it further, explaining why masks were important based off said article. She stated widespread outbreaks had not occurred due to precautions taken both state wide and locally, and now was the time to apply further measures as case numbers began to increase.

Dr. Angela Alfaro expressed her gratitude for the well thought out comments of previous speakers. She explained current data surrounding the infectivity rate of the virus, as well as risks associated with suggested treatments. She felt prevention was the best focus at the time and stated she supported the mask mandate.

Mayor O'Neil closed public testimony and invited Council to begin discussion.

Council Member Sorum stated he supported the mandate. He felt it was a low impact, highly effective way to protect the community.

Council Member Devens shared his concern over misinformation and expressed

his confidence in the medical community. He appreciated those concerned over infringement of liberty, but stated mask mandates in other areas of the country had been shown as constitutional. He claimed polls in other areas had shown the popular opinion was to approve mask mandates.

Council Member Fleming stated he supported wearing a mask, but did not support mandating it. He thanked those who sent testimony by email, and stated he had responded to the emails he had received directly.

Council Member Scheidt felt concern over implementing a mask mandate. She felt the mandate was not presented well. She stated it did not come as a recommendation from Valdez Unified Command. She stated it did not contain important information, such as a goal, why it was recommended, how it was evaluated, or the threshold for repealing. She had requested a complete implementation and communications plan and hoped to receive it during the meeting. She felt the mandate as written caused confusion and divisiveness. In conversations she had, she spoke with people who supported the mandate at the right time. She felt Council had an obligation to provide proper information with mandates and hoped Council would do better in the future. She stated she would support the mandate based on input she received after the mandate failed in the past. She felt in spite of what she mentioned above, she had to err on the side of caution and support the mandate. She wanted locals and visitors to safely take advantage of all Valdez had to offer. She shared a personal experience where masking had benefited her.

Council Member Love stated she had based her opinion of the mandate on what she perceived to be facts, based on her education, experts' opinions and reputable sources. She felt the goal was to keep businesses open, keep schools functioning, to maintain overall community health, and to keep the healthcare system operating. She stated masking was the least invasive option to curb the spread of the virus in the community. She was interested in supporting the mandate, but wanted to see changes made to it prior to voting on it.

Council Member Ruff stated he agreed with opinions expressed by fellow Council Members. He agreed with the function of masks, but expressed concern over the enforcement aspect of the mandate as presented.

Mayor O'Neil stated he supported the mandate. He expressed his understanding of opposing views, but felt masking was something the community could do to help protect the vulnerable. He felt it was time to dig deep and support one another.

Council Member Scheidt reiterated the mandate as presented did not clearly state the goal, the reason, or the threshold of why the time to approve was now.

MOTION TO AMEND #1: Council Member Scheidt moved, seconded by Council Member Sorum, to amend mandate # 003 by striking the two introductory paragraphs and replacing them with the following:

"The COVID-19 pandemic continues to threaten the health and well-being of Valdez. With our first confirmed cases of the virus, we've reached a dangerous threshold where it is recommended we require, not request, preventative measures that will reduce the possibility of a surge that could create community transmission and overwhelm our local healthcare

system. The first case of confirmed community transmission may require more drastic public health measures. Therefore, we must work proactively to avoid this threshold and keep our community healthy, our small businesses open, and our children headed back to school this fall.

Recent studies indicate that mask wearing by the public can help reduce the spread of the virus. Based on this information, the CDC now recommends wearing cloth face coverings in public settings where social distancing measures are difficult to maintain. In line with this recommendation the City of Valdez puts forth this mandate to preserve the health and safety of our community through prevention of community transmission”.

Council Member Devens felt presumptive language should not be included. Council Member Scheidt agreed.

Mr. Prax felt the amendment spoke to purpose, which was important. He expressed his concern over the numbers being inflated and actual risk not matching the need for a mandate. There was a brief discussion about different case count numbers in different parts of the country.

VOTE ON THE MOTION TO AMEND #1:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION TO AMEND #1 CARRIED.

Council Member Devens suggested an amendment to the enforcement section of the mandate. Mr. Staser recommended a flat fee, with the option to pay without appearing in court. Council Member Devens agreed and expounded on a fee schedule. Chief of Police Bart Hinkle stated Valdez Municipal Code, Section 9.36.060 already included a fine schedule for failure to follow Valdez public health mandates. This section of code was approved in March 2020. Chief Hinkle explained, in conversations with police forces in communities with mandates, it appeared other communities did not have a defined fine schedule in place specific to this type of mandate. Council Member Devens retracted his amendment.

MOTION TO AMEND #2: Council Member Scheidt moved, seconded by Council Member Love, to amend mandate # 003 by striking the second sentence of the third paragraph of the mandate and replacing it with the following: "***THE FOLLOWING MANDATE SHALL HAVE THE POWER OF LAW, AND SHALL BE REVIEWED ON SEPTEMBER 15, 2020, AND THEREAFTER AS RECOMMENDED BY THE VALDEZ COVID-19 UNIFIED COMMAND.***"

Council Member Love asked if there was an advantage to having the specifics of repealing the mandate written into the mandate itself. Mr. Staser suggested setting review of the mandate to regularly scheduled City Council meetings. Council Member Ruff suggested a trigger for review be thirty days after a decline in numbers began. Mayor O'Neil suggested defining a decline as recommended by Valdez Unified Command. Council Member Devens suggested instead, review be scheduled when the city or state emergency mandates are scheduled

to be rescinded. Mayor O'Neil stated Council could bring up the mandate for amendment, extension, or recension at any time with six hours' notice. Council Member Scheidt expressed her desire to have a secondary trigger to review of the mandate, other than the date in the amendment. Council Member Sorum suggested Council review the mandate on September 15th and every month thereafter. Council Member Devens felt Council Member Sorum's desire to revisit monthly after Labor Day was best practice, as was taking advisement from Valdez Unified Command. Mr. Staser confirmed Unified Command would give recommendation when they felt the mandate should be reviewed.

Mr. Prax asked how the mandate applied to the schools. He recommended August 15th as the outlined date for initial review as it would be prior to school beginning.

VOTE ON THE MOTION TO AMEND #2:

Yays: 6 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, and Council Member Sorum

Nays: 1 - Council Member Fleming

MOTION TO AMEND #2 CARRIED.

MOTION TO AMEND #3: Council Member Ruff moved, seconded by Council Member Devens, to amend mandate # 003 by striking the first sentence of the third paragraph of the mandate and replacing it with the following: "*THE CITY OF VALDEZ HEREBY ORDERS THE FOLLOWING MANDATE TO BE EFFECTIVE AS OF 5:00 PM ON JULY 10, 2020.*"

Mr. Prax asked about local mask supply. Chief Hinkle confirmed the City had adequate supply for distribution to residents and visitors.

VOTE ON THE MOTION TO AMEND #3:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION TO AMEND #3 CARRIED.

MOTION TO AMEND #4: Council Member Love moved, seconded by Council Member Devens, to amend mandate # 003 by adding the following sentence at the end of paragraph 4.A: "*Additionally, students over the age of 5 years enrolled in a Valdez School District school or a licensed childcare program may be exempted from this order during school activities as determined by Valdez School Board policy or DHSS childcare licensing requirements.*"

Mr. Prax suggested moving the exemption age to eighteen years. Mayor O'Neil stated his understanding of the amendment was the exemption would be for students in schools and daycares during school activities.

VOTE ON THE MOTION TO AMEND #4:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION TO AMEND #4 CARRIED.

Council Member Fleming asked in regards to outdoor areas such as Ruth Pond, if children would be expected to wear masks while swimming. Mr. Detter asked Mr. Staser if there were any outdoor activities for which the mandate required wearing of a mask. Mayor O'Neil and Council Member Devens agreed the mandate stated any outdoor activity where social distancing was unable to be maintained required the wearing of a mask. Activities where it was unsafe to wear a mask, such as while swimming, were included in the exemptions list.

VOTE ON THE MAIN MOTION AS AMENDED:

Yays: 5 - Mayor O'Neil, Council Member Love, Council Member Scheidt, Council Member Devens, and Council Member Sorum

Nays: 2 - Council Member Fleming and Council Member Ruff

MAIN MOTION AS AMENDED CARRIED.

VII. RESOLUTIONS**1. #20-36 - Celebrating Valdez Fisheries Development Inc., 40th Anniversary and Recognizing VFDA on this Outstanding Achievement**

MOTION: Council Member Scheidt moved, seconded by Council Member Devens, to Resolution # 20-36.

Mayor O'Neil read the Resolution into the record.

Valdez Fisheries Development Inc. Executive Director Mike Wells thanked the City of Valdez for its recognition of the VFDA. He shared the history of the VFDA and ways for the public to learn more about the VFDA. Council Member Scheidt thanked Mr. Wells and VFDA for their efforts.

VOTE ON THE MOTION:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION CARRIED.

2. #20-37 - Authorizing a Gravel Lease for Mega Trucking, LLC on a 73.681 Acre Portion of Tract A, ASLS 79-116

MOTION: Council Member Ruff moved, seconded by Council Member Sorum, to Resolution # 20-37.

Planning Director Kate Huber stated the applicant received a conditional use permit from the Planning & Zoning Commission prior to applying for the lease. There were conditions set in the permit due to the use of gravel extraction being a conditional use in the heavy industrial district. The applicant also requested a twenty year gravel lease included in the language in the resolution. Staff originally recommended a five year lease based on lease policy guidelines. Policy states land leases be for a term of five years unless it was determined a longer lease was in the public's best interest. Most commissioners agreed longer than five years would be appropriate in this case. Staff recommended a five year lease with three, five year renewal options. This would effectively give Mega Trucking a preference to the lease area for a length of twenty years while allowing Council to revisit the issue every five years. If Council preferred to follow the recommendation of staff, the resolution would need to be amended prior to approval.

Ms. Huber outlined the location of the land in question, as requested by Mayor O'Neil.

Mr. Jesse Passin, Owner of Mega Trucking, reviewed his application, why he requested the twenty year lease, his history in the area, and his goals for the future.

Council Member Fleming asked if the city had granted a twenty year lease to anyone in the past. Council Member Sorum confirmed, as did Ms. Huber this action had occurred in the past. Council Member Fleming asked why work depths had not been identified on the resolution. Ms. Huber offered there had been several work depths identified. Mr. Passin outlined the work depth data he had provided with his application.

Council Member Devens asked why the standard five year lease term had been adopted in policy. Ms. Huber replied it was not typically in the public interest to grant a lease longer than five years, although there had been exceptions made in the past, including the existing Harris Sand & Gravel lease located adjacent to the lease in question. Council Member Devens requested Ms. Huber expand on the recommended five year lease with three five year renewal options. Ms. Huber stated the recommended renewal schedule was a compromise which allowed for Council to reevaluate the decision based on the outcome of the Comprehensive Plan and any updated data at the time. Council Member Devens asked when the Harris Sand & Gravel lease had been granted and when it would expire. Ms. Huber stated the twenty year lease had been granted beginning in 2002.

Mr. Passin expanded on the purpose for a longer lease. He explained the process had already taken him nine years to get to this point. Mayor O'Neil expressed concern the same land had been denied to a previous company in 2018, as well his concerns over flooding issues in the area. Mr. Passin identified the portion of the tract he was seeking a lease for differed from the portion the previous company had requested in 2018. Ms. Huber explained the tract of land was one thousand acres. The portion Mr. Passin was requesting was not the same portion the previous company had requested. She identified the flooding concerns were why the commission was recommending the five year lease with three, five year renewal options. She expounded on concerns expressed over mixed uses of property between recreational and heavy industrial. This had been a concern brought up in regards to a different gravel lease located closer to the police shooting range and the Valdez Glacier Lake. Mixed use concerns did not

apply to the lease in question.

Council Member Devens asked about the risk of contaminating well water used by neighboring residential areas. Ms. Huber recommended reviewing the area during the Comprehensive Plan process. Mr. Passin identified one of the reasons they had selected the land identified in the lease was the recommended distance from a well was one thousand feet. The closest public well was four thousand, sixty-six feet away from the border of the requested lease.

Mayor O'Neil requested clarification on why staff recommended the five year lease with three five year renewal options as opposed to the twenty year lease identified in the resolution. Ms. Huber stated staff understood why the twenty year lease was requested, but the reason staff stuck with their recommendation was they hoped to have more data regarding the hydrology of the area, as well as flooding concerns, when the renewal was brought before Council after the first five year term. Discussion on a gravel plan ensued, including how the lease and the gravel plan would affect one another.

Council Member Devens asked if there was any data on the concerns of the hydrology in the area or if it was a general concern. Ms. Huber confirmed the later. Council Member Devens asked if there was an advanced likelihood of flooding given the development of gravel extraction in the area. Ms. Huber declined commenting without more data on the topic. Mr. Passin explained the work being done by similar companies surrounding the lease area was having minimal effect in that regards.

In response to Mayor O'Neil's concern, Mr. Detter explained once the Comprehensive Plan was complete, it would drive conversations regarding building code and gravel management. A number of issues needed addressing in the Comprehensive Plan prior to completing a gravel management plan.

Council Member Sorum, Council Member Ruff, Council Member Fleming, and Council Member Love all recommended moving forward with the twenty year lease. They felt it was important to support local businesses and aid in their growth.

Valdez Resident Joe Prax expressed his concern and frustration over the process taking Mr. Passin nine years to obtain the gravel lease. He encouraged Council to be pro-business and encourage people to invest in the community. He explained although plans were important, they took time to create and progress should not be put on hold to wait for plans to be worked out.

Council Member Love shared her support for upcoming plans which will help guide staff in situations such as this. Council Member Devens agreed. Mayor O'Neil expressed his appreciation for the process.

VOTE ON THE MOTION:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION CARRIED.

3. #20-38 - Authorizing the Continuance of the COVID-19 Local Government Disaster Declaration

MOTION: Council Member Fleming moved, seconded by Council Member Devens, to Resolution # 20-38.

VOTE ON THE MOTION:

Yays: 7 - Mayor O'Neil, Council Member Ruff, Council Member Love, Council Member Scheidt, Council Member Devens, Council Member Fleming and Council Member Sorum

MOTION CARRIED.

VIII. REPORTS

- 1. Procurement Report: Professional Services Agreement with Wolf Architecture, Inc. for City Council Chamber Upgrades in the Amount of \$49,020.00**
- 2. Quarterly Financial Statements for period ending 3/31/2020**
- 3. Comprehensive Plan Update**
- 4. Change Order Report: Contract with Harris Sand & Gravel for Pavement Management Phase 1 - West Egan Drive.**

IX. CITY MANAGER / CITY CLERK / CITY ATTORNEY / MAYOR REPORTS

1. City Manager Report

Mr. Detter asked Ms. Ferko to highlight the implementation of the communications plan for the masking mandate. Ms. Ferko reviewed the outreach approach for public health mandate 003, including infographics and mailers. She also shared information on where to obtain cloth facial coverings locally. Ms. Ferko requested Council verify their intention within the mandate that masks were required outdoors in instances where six foot social distancing could not be maintained. Mayor O'Neil and Council Member Devens confirmed this as correct.

2. City Clerk Report

Ms. Pierce stated she had no report.

3. City Attorney Report

Mr. Staser reserved his report to executive session.

4. City Mayor Report

Mayor O'Neil wished the community a belated happy Independence Day. He expressed his admiration for the Coast Guard Change of Command Ceremony and those who participated.

X. COUNCIL BUSINESS FROM THE FLOOR

Council Member Fleming asked Mr. Detter why local areas normally outfitted with outhouses and trash receptacles had not been supplied with said items and why the city maintained public restrooms at the hatchery had been locked over the Fourth of July weekend. Mr. Detter stated the situation was being rectified, although continued vandalism was a concern.

XI. EXECUTIVE SESSION

The City Council transitioned into executive session at 10:48 p.m.

XII. RETURN FROM EXECUTIVE SESSION

The City Council transitioned out of executive session at 11:48 p.m.

XIII. ADJOURNMENT

There being no further business, Mayor O'Neil adjourned the meeting at 11:49 p.m.