

**MIDLAND CITY COUNCIL
MINUTES
November 23, 2020**



The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m., November 23, 2020.

Council Members present: Patrick Payton, Spencer Robnett, Michael Trost, Scott Dufford, John Norman, Jack Ladd, Lori Blong

Council Members absent: None

Staff members present: City Attorney John Ohnemiller, Interim City Manager Robert Patrick, Assistant City Manager Morris Williams

The meeting was called to order at 9:10 a.m.

OPENING ITEMS

1. Invocation – Senior Pastor Darin Wood, First Baptist Church
2. Pledge of Allegiance

SECOND READINGS

3. 10135 – AN ORDINANCE ADOPTING A FEE SCHEDULE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING AN APPEAL PROCESS; AND ORDERING PUBLICATION (FINANCE) (FIRST READING HELD NOVEMBER 17, 2020)

Spencer Robnett moved to approve the second and final reading of Ordinance No. 10135; seconded by Michael Trost.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

MISCELLANEOUS

4. 2020-200 – RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND

COUNTY HOSPITAL DISTRICT IN THE AMOUNT OF \$1,376,572.00 FOR THE PURPOSE OF FUNDING PROJECTS RELATED TO THE HOSPITAL DISTRICT'S RESPONSE TO THE COVID-19 PANDEMIC; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS

Dr. Larry Wilson did not have any comments except to say he appreciated the City's consideration of this item.

Council Member Robnett reviewed the items covered by the grant.

Spencer Robnett moved to approve Resolution No. 2020-200; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

5. 2020-193 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH THE YOUNG MENS CHRISTIAN ASSOCIATION OF MIDLAND, TEXAS FOR THE FACILITY IMPROVEMENT PROGRAM IN THE AMOUNT OF \$244,303.00 (DEVELOPMENT SERVICES) (DEFERRED FROM NOVEMBER 17,2020)

Discussion ensued about how this grant money will be used noting it is for facility upgrades for childcare. When asked what it was specifically for, staff was not certain. Council Member Blong added that the YMCA ramped up in the spring covering the needs and taking care of kids when they could not be in school and she is very supportive of this program. It was determined that more detail was needed to properly consider this item.

Russel Myers (speaking to the previous item) thanked Council for the money noting they would be opening an additional 12 beds on the 9th floor maximizing their capacity. He noted that today is the 7th day in region J where they have been over 15% of their beds devoted to COVID patients which triggers the Governors orders to reduce capacity to 50% across the community.

Scott Dufford moved to defer Resolution No. 2020-193; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

6. 2020-194 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH ST. VINCENT DE PAUL SOCIETY FOR THE SOCIAL SERVICES RENTAL AND UTILITY ASSISTANCE PROGRAM IN THE AMOUNT OF \$99,000.00 (DEVELOPMENT SERVICES) (DEFERRED FROM NOVEMBER 17, 2020)

John Norman moved to approve Resolution No. 2020-194; seconded by Jack Ladd.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

7. 2020-195 – RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH SAINT ANN’S CHURCH FOR THE SOCIAL SERVICES RENTAL AND UTILITY ASSISTANCE PROGRAM IN THE AMOUNT OF \$100,000.00 (DEVELOPMENT SERVICES) (DEFERRED FROM NOVEMBER 17, 2020)

Spencer Robnett moved to approve Resolution No. 2020-195; seconded by Lori Blong.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

Mayor Payton noted Executive Session would be heard next.

8. 2020-201 – RESOLUTION AUTHORIZING THE MIDLAND POLICE DEPARTMENT TO ENFORCE GOVERNOR GREG ABBOTT'S EXECUTIVE ORDER NO. GA-29

John Norman moved to approve Resolution No. 2020-201; seconded by .

The motion by the following vote:

AYE: None

NAY: None

ABSTAIN: None

ABSENT: None

The motion died for lack of a second.

9. 10137 – AN ORDINANCE DIRECTING OWNERS AND OPERATORS OF COMMERCIAL ENTITIES, BUILDINGS, AND OTHER ENCLOSED SPACES THAT ARE OPEN TO THE PUBLIC (1) TO POST NOTICES THAT FACE COVERINGS MUST BE WORN AND (2) TO REQUIRE INDIVIDUALS TO WEAR FACE COVERINGS; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00) FOR A VIOLATION OF THE NOTICE POSTING REQUIREMENT; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

Council Member Ladd reported he is willing to amend this item to have it enforced by Code Enforcement rather than the police.

Regan Hignojos, 5108 Ric Drive, reported we will soon find out the true mortality of COVID. He heard some say that a mask is not effective but encourage hand washing and social

distancing. Mask opponents say they are a breeding ground for bacteria and virus. Most people wear clean clothes every day and we should do the same for our masks. We are becoming complacent. The virus is a marathon not a sprint and leaders need to encourage the people to finish the race. We should be handing out masks and pumping hand sanitizer and encouraging social distancing. You are not nannies, but leaders, please lead us to victory.

Heather Bredimus, 3106 Auburn, for eight months we have been fighting the Corona Virus with no actionable plan to help slow the spread. The Governor issued an Executive Order requiring masks to allow business to operate safely. She felt the Mayor's speech on September 17th is impacting the attitude of many in the community and wondered why he has not proposed an actionable plan he could support. The City has enough resources to require signs in all businesses. She is in favor of this proposal and encourages all business owners to require employees to wear masks where they cannot social distance.

Jenny Cudd, 2603 N. Midland, spoke against this item noting the ordinance imposes a \$500 penalty every day if they do not post a sign, and can be charged with a misdemeanor. She asked where her due process was. She reported there are only three businesses in town that don't have a mask required sign on the door and did not feel anyone had the right to tell her what to post on the door of her business.

Jazmin Sanchez spoke in favor of the proposal noting that health care workers are beyond stressed with this matter. They already sacrifice by distancing themselves from their families and the least we can do is show support for them and put on a mask to care for one another and protect each other as neighbors. By doing so, it ensures that anyone who is in an accident can access the health care they need. We are Midlanders and should be proud of that.

Eliel Rosa, 3603 Humble, stated that the Council is elected not to make us feel safer, but to follow the constitution, which has never been suspended.

Larry Brautigam, 3603 W. Ohio, felt the ordinance as written is not effective. He suggested making the mask requirement by square footage of the business and leaving the smaller businesses alone. The store is allowed to refuse service and can ask any customer put on a mask or leave if they choose. The constitutional argument just heard is lunacy and would mean we could ignore school zones or traffic laws because they are not in the constitution. The ordinance is a good start but thinks enforcement and punishment is wrong. Let small businesses do what they want but make them sign a waiver that they will not accept medical care from the hospital if they get sick. That is their choice.

Shandi Williams, 2513 Fannin, showed a mask made of cheese cloth noting it is deemed appropriate but it is not good at stopping anything. She spoke about medical exemptions noting if someone doesn't wear a mask all they have to do is say they have a medical exemption and there is nothing anyone can do about it. No one can ask a question about why you have a medical exemption. Businesses are losing revenue and the responsibility for enforcing this should not be placed on them. Her kids are still playing sports. A mask is not going to make the virus go away. We need to speak about immunity, not masks.

Dr. Larry Wilson, Chief Medical Officer at MMH, reported that 25% of people who are

tested are testing positive, which is a significant surge. The previous speaker who spoke about her kids still participating in sports supports the fact of this surge and it will continue until people stop getting together. The hospital is bursting at the seams. They received the tents today which will create more beds. The hospital never turns away any patient in need. We are a long way from herd immunity and action needs to be taken to get the positivity rate down. Masking and preventative behaviors slows down the spread. Masking not only helps you from not getting the virus, but it helps others from not breathing your breath. There is a lot of uncertainty around these issues, but we have to take a stance that supports controlling the disease.

Kristin Trout, 6711 Colony Road, spoke about choices she makes in life that all have risks related to them but noted that now she is having her choices taken away in the interest of safety. This illness will not go away and we can't shut down and lose our livelihoods. Don't take away her freedom.

Wendy Holland, 2604 Sentinel, asked if when Council has to make a decision will they fall on the side of citizens or business owners. She will not comply and will not wear a mask. If customers choose to wear masks in her store that is their choice.

Tom Soper, 4008 ECR 140, has three adult children that have all had Corona Virus and none of them wear a mask. He is 70 and will not wear a mask. He didn't get the disease when all the others in his family had it and neither did any of the grandchildren. He doesn't believe in political correctness. Any decision that Council makes will be a point of contention with somebody. He doesn't want to be told he has to police or attack other people if they choose not to wear a mask. He went into a business where he was told he had to wear a mask and he just turned around and left. He will socially distance himself and will not get in other people's faces and breathe on them and expects everybody in the country to do the same.

Police Chief Seth Herman when asked about enforcement spoke of dealing with people who are resistant. It creates problems between citizens and law enforcement and it can be dangerous for both groups. It would increase call volumes meaning real emergencies may not get through. His force is already stretched thin and this will only exacerbate the issue.

Jack Ladd moved to approve first of two readings of Ordinance No. 10137 with the amendment to change enforcement to code enforcement rather than police department enforcement; seconded by John Norman.

The motion failed by the following vote:

AYE: Trost, Norman, Ladd

NAY: Payton, Robnett, Dufford, Blong

ABSTAIN: None

ABSENT: None

10. 139-2020 – MOTION APPROVING A COVID-19 SEVEN-POINT MITIGATION PLAN (THE "MITIGATION PLAN"); AND AUTHORIZING THE INTERIM CITY MANAGER OR HIS DESIGNEE TO TAKE ALL ACTION NECESSARY AND APPROPRIATE TO IMPLEMENT THE MITIGATION PLAN

Council Member Trost reviewed the amendments to be made. The sections that would remain are 1, 5b, 5d, 6 and 7.

Jasmine Sanchez was called but not present.

Heather Bredimus, 3106 Auburn, thanked Council for coming to the hospital and supporting the workers. She read the proposal and appreciated the plan noting it would be helpful to create a task force and implementing empirical data to know when the City is in dire straights. They have created a Facebook group which promotes businesses who encourage the wearing of masks.

Jenny Cudd, 2603 N. Midland, noted she felt this plan might have had legs 6 months ago. She feels it is using taxpayer money to create a bureaucracy that is cruel to business owners. Of all the proposed items today this is the most tyrannical. She reviewed how the mask mandate would impact her business specifically with fines out of pocket. This would cause irrevocable damage and a decline to local businesses.

Wendy Holland, 2604 Sentinel, noted that there might be an overlap in duties taken on by the hospital in conjunction with small business owners in the community if we have a mitigation committee. The committee should be well represented from a cross section of the people.

Michael Trost moved to approve Motion No. 139-2020 with the amendment to remove Section 2 mask ordinance, Section 3 testing, Section 4 metrics, and Section 5A and 5C advertising agencies; seconded by John Norman.

The motion failed by the following vote:

AYE: Trost, Norman

NAY: Payton, Robnett, Dufford, Ladd, Blong

ABSTAIN: None

ABSENT: None

11. 2020-202 – RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, IN SUPPORT OF MIDLAND RESIDENTS PRACTICING EFFECTIVE HEALTH PROTOCOLS IN ORDER TO REDUCE THE SPREAD OF COVID-19; IN SUPPORT OF THE EXCEPTIONAL WORK OF MIDLAND HEALTH CARE PROFESSIONALS, INCLUDING EMPLOYEES OF MIDLAND MEMORIAL HOSPITAL AND THE CITY OF MIDLAND HEALTH DEPARTMENT; IN SUPPORT OF THE GOVERNOR' S ORDER REQUIRING INDIVIDUALS TO WEAR A FACE COVERING; AND IN SUPPORT OF BUSINESS OWNERS AND OPERATORS POSTING SIGNAGE THAT WEARING A FACE COVERING IS REQUIRED WHEN INSIDE THE BUSINESS

Council Member Dufford noted he already stated his opinion in the newspaper. If we pass this resolution we already have GA29 which is Governor Abbott's executive order mandating masks should be worn in the community because it makes people feel safe. He doesn't think we should put the onus on business owners. He is in favor of the resolution as written.

Council Member Norman agreed adding that we should be enforcing the Governor's mask mandate. He thinks everyone should think about their neighbors instead of their own selfish

ways.

It was noted that Dr. Wilson had to leave but he was in favor of this item.

Heather Bredimus read a statement from Kimberly Crisp noting that Midland Memorial Health has made it clear that they want people to wear masks and socially distance. Council should lead by example in wearing their masks properly. Kimberly added that Council should not vote in favor of the item because it does nothing.

Scott Dufford moved to approve Resolution No. 2020-202; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Dufford, Norman, Ladd, Blong

NAY: Trost

ABSTAIN: None

ABSENT: None

12. 2020-203 – RESOLUTION ADDING ONE (1) REGULAR CITY COUNCIL MEETING ON DECEMBER 1, 2020, TO THE CITY COUNCIL MEETINGS SCHEDULED FOR THE 2020 CALENDAR YEAR

No action was taken on this item.

13. MOTION MAKING APPOINTMENTS TO VARIOUS BOARDS AND COMMISSIONS (CITY SECRETARY'S OFFICE)

Scott Dufford moved to defer this item to the December 15 meeting; seconded by Spencer Robnett.

The motion passed by the following vote:

AYE: Payton, Robnett, Trost, Dufford, Norman, Ladd, Blong

NAY: None

ABSTAIN: None

ABSENT: None

EXECUTIVE SESSION

Mayton Payton recessed the meeting to go to Executive Session at 9:33 a.m.

14. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:

- a. Section 551.071, Consultation with the City Attorney

- a.1. Discuss matters in which the duty of the attorney(s) to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code. (CITY SECRETARY'S OFFICE)

Mayor Payton reconvened the meeting in regular session at 10:15 a.m.

All the business at hand having been completed, the meeting adjourned at 11:37 a.m.

PASSED AND APPROVED December 15, 2020.

Patrick Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary