

MINUTES

**THE EMERGENCY SPECIAL MEETING OF THE
BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI**

March 23, 2020

INTRODUCTORY

The Board of Aldermen of the City of Branson, Missouri, met for an emergency special meeting in the Council Chambers of the City Hall on March 23, 2020, at 4:00 p.m. Mayor Akers called the meeting to order with the "Pledge of Allegiance" and Ted Martin gave the invocation.

ROLL CALL

City Clerk Lisa Westfall called roll: Mayor Edd Akers presiding, Kevin McConnell, Brian Clonts, Bob Simmons, Bill Skains, Larry Milton and Rick Castillon.

ANNOUNCEMENT

Mayor Akers announced the Emergency Special Meeting is being called per 610.020.4 RSMo and the nature for less than 24 hour notice is Section 79.380 RSMo, permits the Board of Aldermen to make regulations and pass ordinances for the prevention or of the introduction of contagious diseases in the City and for the abatement of the same and may make quarantine laws and enforce the same within five miles of the City. The City of Branson is faced with an unprecedented and immediate risk of infection with COVID-19 virus among the entire population and time is of the essence for containment. There are 15 reported cases in the State of Missouri as of 10:00 a.m. March 18, 2020. Four of those are in Greene County, Missouri, and as of 8:45 a.m. on March 22, 2020, 106 cases in the State of Missouri, 15 cases in Greene County. Today we have one reported case in Taney County. This is the virus in which there is no known reported cure and may result in death upon high risk individuals.

Mayor Akers read a statement regarding speaker decorum and stated once public discussion has ended on an item and the Board starts their discussion, no additional comments will be taken from the audience. Please remember to speak into the mic and state your name and address for the record. Please seek to follow our five minute time guideline. The citizens of Branson elected us to make decisions on policy matters and we make those decisions by voting. We are obligated to vote unless a conflict of interest prevents us from doing so. The common law in the State of Missouri supports this. Although I cannot force any member of the Board to cast a vote and no member can be required to cast a vote, I do have the ability to control the order and decorum of these meetings. As a result, I'm announcing under my authority to preserve order and decorum of these meetings, that any abstention by any member of the Board during this meeting can be recast as a no vote.

REGULAR AGENDA

BILL NO. 5807

Ord. No. 2020-0052

Amending Chapter 58 of the Branson Municipal Code pertaining to public gatherings, social gatherings and essential businesses.

First Reading of Bill No. 5807, an ordinance amending Chapter 58 of the Branson Municipal Code pertaining to public gatherings, social gatherings and essential businesses was read by title by City Clerk Board of Aldermen

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Lisa Westfall and a staff report was presented by City Attorney Chris Lebeck. Discussion. Mayor Akers asked for a motion approving Bill No. 5807. Alderman Skains so moved, seconded by Alderman Clonts. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter.

Karl Finkenbinder, 100 Prairie Dunes Drive, Branson, Missouri, stated he's with Schenewerk & Finkenbinder Law Firm and probably comes from a different bent than a lot of people on this. He values his liberty as much as his health and understands the Board is in a very difficult position. He's not envious of that and with his comments he wants to be as respectful as he can. He feels there's no easy answer to this and the Board is making hard decisions, trying to do what is right and he asked the Board to please understand he's not trying to attack. Mr. Finkenbinder commented on the ordinance that passed last week and expressed his concerns pertaining to Constitutional issues with First and Fifth Amendment rights and how this starts to eat away at them. At the time, he made a cost-benefit analysis to see if he could live through this for the next couple of weeks and had just come to the conclusion that the path of least resistance was best for now. He stated with this ordinance, his law firm would be shut down tomorrow at 8:00 a.m. and based on what the City's counsel just stated, this leaves him in a difficult position. He added, obviously he's going to have a choice at that point to move in a different direction. Mr. Finkenbinder expressed his concern for the statute not including law firms as an essential business. He explained this is his main concern and believes many people would agree law firms provide essential business and probably just as essential in a time like this as healthcare or lodging. He said he appreciates City Attorney Chris Lebeck's statement regarding law firms operating via electronic means. He reported his law firm has done this to some extent as it has restricted lobby access, closed its doors and is doing phone appointments. He explained this doesn't always work for his firm and mentioned having to meet with a client this morning regarding a very sensitive matter involving attorney-client privileged information. He added, some very confidential documents needed to be shared and his client was concerned about sharing those documents via electronic medium. Mr. Finkenbinder mentioned the client had to come in and his firm followed all World Health Organization (WHO) protocol and CDC guidelines such as keeping distance. He explained his law firm has done this and continues to do so as he wants to be responsible. He agreed with City Attorney Chris Lebeck's comments regarding in-person court appearances and reported the Supreme Court actually extended its order. He clarified it's a misconception that courts are closed since courts cannot be closed ever; they always have to be open for a redress of people's rights. He explained the Supreme Court has severely limited in-person court appearances and has extended its order to April 17th. Mr. Finkenbinder said he has a case right now for which he will probably have an emergency in-person court appearance this week. He added, so there will be certain situations where citizens' rights need to be immediately addressed and restricting his ability to meet with a client or conduct business will affect him. He requested the Board consider adding law firms to the definition of essential business which would resolve his concerns. He gave the example of will executions in which only original wills are valid and have to be signed, notarized and witnessed by two witnesses, requiring a multi-party signing event all in the same room. He clarified he doesn't handle wills or estate planning anymore, but this is just one example. He feels what City Attorney Chris Lebeck said still doesn't address his situation of needing to meet with some people. Mr. Finkenbinder explained he won't have the ability to stop doing what he's doing. Starting tomorrow, if the police come to his office he'll be there and will take it as he has to, but hopes to avoid any of that because he doesn't have that choice. Mr. Finkenbinder addressed the Board's inquiries regarding the possibility of meeting people in their homes and feels this might work in some instances, but not all. He mentioned already having made sacrifices and thinks it's going to be difficult to make exceptions. He disagrees with restaurants being open to serve sandwiches, while law firms aren't able to dispense legal advice from their own buildings. Discussion.

Cody Fenton, 168 South Payne Stewart Drive, thanked the Board for what it's doing in this difficult time. These are decisions the Board probably didn't think it would have to be making just a few short weeks ago and he appreciates that and knows this is not easy for anybody. He's speaking this evening because he has a little bit of a different perspective from Mr. Finkenbinder and would like to add a few comments. He thinks there are some inconsistencies in the ordinance and he'd like to make some general comments and then talk about his specific practice and his argument that the legal profession be exempted or an accommodation made. He referenced Section 58-387 pertaining to public or social gatherings in which the ordinance says it's unlawful to operate in an enclosed public space in a manner that exceeds 25% of the established occupant load. He pointed out nowhere does it say it's limited to essential businesses and

thinks there are inconsistencies between Sections 387 and 388. Mr. Fenton commented under Section 389 it says it should be unlawful to take part in or allow eating or drinking on the premises of any restaurant or business open to the public. He feels the way this reads is if he were to go through the drive-thru of Arby's and take a drink of soda while sitting in his car, he would be in violation of this ordinance. He explained that's probably a simplified, silly reading of it, but in times like these when people's liberties are being infringed upon, people have to be careful and read this in the most literal sense. He stressed the government should always take the least restrictive means approach to this and not infringe upon rights any more than it has to. He understands this is a different climate from what people are used to as there's a lot going on in the world. Mr. Fenton stated when it comes to his legal business he very seldom goes to the court since it's not required of what he does. He explained he primarily does estate planning and this ordinance would say if somebody needs to prepare a healthcare power of attorney, living will or some other type of estate planning documents, during this time he wouldn't be able to do that. He feels the suggestion that people could come to his house or he could go to theirs is much more risky to his health, his staff's health and his family's health. He explained his law firm has taken steps like everybody else to comply with CDC guidelines, sanitizing the office and restricting people coming into the office to only essential services. He said he would argue now, more than ever, estate planning services are essential and his law firm should be allowed to stay open to provide those basic legal services to its clients, which is somewhat what Mr. Finkenbinder was arguing.

Donna Nolte, 103 West Main Street, Branson, Missouri, commented her business has been closed since last week and has had some key managers working in the store while the building has been closed. Abiding by all the CDC guidelines and being well within the 25% guidelines, she asked if her business would still be able to proceed with its projects. Discussion.

Mayor Akers asked for comments from the Board. Discussion.

The meeting recessed at 5:14 p.m. and reconvened at 5:38 p.m.

Alderman Clonts moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 58-1 – Definitions.

Essential businesses means for purposes of this Chapter only day care facilities which serve employees of essential businesses, health care facilities, grocery stores, convenience food stores, service stations, drug stores, pharmacies, public service or telecommunication facilities, financial institutions, law firms, accounting firms, government offices and facilities, lodging establishments, and restaurants or other businesses as deemed essential by the Emergency Management Director or the City Administrator.

Section 58-388 – Operation of Non-Essential Business Prohibited

(a) Only essential businesses operations are permitted to operate in the city.

(b) Non-essential businesses may continue operations consisting exclusively of employees, contractors, or other agents of those businesses performing activities at their own residences. Employees, contractors, or other agents of those businesses may only be on the premises of those businesses for emergency purposes only as allowed by the Emergency Management Director or City Administrator.

Seconded by Alderman Skains. Discussion. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Mayor Akers called for a vote on the amendment. Voting aye: Clonts, Simmons, Skains, Milton, Castillon. Nays: McConnell. Motion carried.

Alderman Milton moved to amend Bill No. 5807 as follows [primary amendment as follows, changes indicated in red]:

Section 58-388 – Operation of Non-Essential Business Prohibited

(c) Non-essential businesses may allow no more than ten people of the business on the premises if the premises are closed to the public.

Seconded by Alderman Castillon. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. Discussion. Alderman Castillon moved to make an additional amendment [secondary amendment as follows, changes indicated in red]:

Section 58-388 – Operation of Non-Essential Business Prohibited

(b) Non-essential businesses may continue operations consisting exclusively of employees, contractors, or other agents of those businesses performing activities at their own residences. Employees, contractors, or other agents of those businesss may only be on the premises of those businesses for emergency purposes only as allowed by the Emergency Management Director or City Administrator.

Seconded by Alderman Milton. Mayor Akers asked for comments from the Board. Discussion. Mayor Akers called for a vote on the amendment [secondary amendment]. Voting aye: McConnell, Simmons, Skains, Milton and Castillon. Nays: Clonts. Motion carried. Mayor Akers called for a vote on the amendment [primary amendment]. Voting aye: Simmons, Skains, Milton and Castillon. Nays: McConnell and Clonts. Motion carried.

Alderman Castillon moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 3: This ordinance shall be in full force and effect at **8:00AM on Tuesday, March 24, 2020 8:00 p.m. on Wednesday, March 25, 2020** after its passage by the Board of Aldermen and approval by the Mayor and remain in effect until the Emergency Proclamation of the City of Branson signed by the Mayor on March 17, 2020 expires.

Seconded by Alderman Milton. Mayor Akers asked for comments from the Board. Discussion. Alderman Milton moved to rescind his second and Alderman Castillon moved to rescind his motion. City Clerk Lisa Westfall announced there is now no motion on the floor.

Alderman Castillon moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 58-388 – Operation of Non-Essential Business Prohibited

(d) The Emergency Management Director or City Administrator are authorized to allow other people on the premises as needed.

Seconded by Alderman Milton. Mayor Akers asked for comments from the Board. Discussion. Mayor Akers called for a vote on the amendment. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

Alderman Milton moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 58-388 – Operation of Non-Essential Business Prohibited

(d) The Emergency Management Director or City Administrator are authorized to allow other people on the premises of any business as needed.

Seconded by Alderman Castillon.

Alderman Skains left the meeting at 6:31 p.m. and returned at 6:32 p.m.

Mayor Akers asked for comments from the Board. Discussion.

Alderman McConnell left the meeting at 6:35 p.m. and returned at 6:38 p.m.

The meeting recessed at 6:38 p.m. and reconvened at 6:47 p.m.

Mayor Akers called for a vote on the amendment. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

Alderman Milton moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 58-388 – Operation of Non-Essential Business Prohibited

(d) The Emergency Management Director or City Administrator are authorized to allow other people on the premises of any non-essential business as needed.

Seconded by Alderman Castillon. Mayor Akers asked for comments from the Board. Discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried.

Alderman Castillon moved to amend Bill No. 5807 as follows [changes indicated in red]:

Section 3: This ordinance shall be in full force and effect at 8:00 a.m. p.m. on Tuesday, March 24, 2020 after its passage by the Board of Aldermen and approval by the Mayor and remain in effect until the Emergency Proclamation of the City of Branson signed by the Mayor on March 17, 2020 expires.

Seconded by Alderman McConnell. Mayor Akers asked for comments from the Board. Discussion. Mayor Akers called for a vote on the amendment. Voting aye: McConnell and Castillon. Nays: Clonts, Simmons, Skains and Milton. Motion failed.

Alderman Skains stated he'd like to acknowledge that the Governor and/or Health Department can make most of this null and void at any particular time and I'd like to have that on the record and or the President. Discussion.

Mayor Akers asked for anyone in the audience wishing to speak regarding Bill No. 5807 as amended.

Steven Durlin, 401 Limestone Drive, Reeds Spring, Missouri, said he appreciates the Board's time and mentioned he's been listening to this for the last couple hours. He thinks a big piece that's missing here is something that should have been learned from the Governor of New York which is the City doesn't have a regional footprint committed to what it's doing. He gave an example of what's going to happen and said if his wife wants to get her haircut, instead of going to a local business in Branson, she's going to go to Nixa, Ozark, Springfield or Harrison. He feels this would be the same with everything and the Board isn't going to control anything or any spread in the community because citizens will just go elsewhere. He further explained, the City is just putting undue burden on local businesses and believes the Board has to realize that and feels they're making a rash decision. He understands it's coming, but people are not going to be able to stop it and are just hoping to mitigate it. He suggested giving local businesses as much time as possible to get as much revenue as they can to prepare for it. He commented the City is talking about tomorrow, but people can't get Congress to push back the bill in order to give small businesses time and all of these employees are going to be laid off. Mr. Durlin explained if the City gives it until the end of the week, then maybe this package and loans will be in place so businesses can continue to pay their employees. Or if they go on unemployment it is supplemented, not just a maximum of \$200 a week. He asked the Board to realize that if it makes this decision, it's not solving anything unless it can get Greene

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County, Harrison and anywhere else involved so people can't go elsewhere. Mr. Durlin explained it isn't unfettered because of the ordinance put in place by the Governor to have 10 or less people. If the Board were to see the practices put into place by businesses, they would see what everyone's doing with sanitizer, social distancing, hand washing, use of hand sanitizer after helping each customer and customers using hand sanitizer when they enter and leave stores, so these protocols are in place. What the Board is going to have to realize is it can't shut down the City for a year-and-a-half until there's a vaccine. People are going to have to learn to live with this disease; people are going to get sick and the City can't stop it. He explained putting these good habits into place is what people are going to have to do until there's a vaccine, unless the Board is going to shut it down. Then the City will open back up with no small businesses, and that doesn't work because it's going to have poverty like it's never seen. He added, so that's why even the Federal Government will lift these ordinances pretty soon and there's going to be an overburdening of the medical community, but with these practices in place we can mitigate as best as we can. If the Board is saying to close down, he feels it's unfair for a dress shop to be closed while Walmart is selling clothes and TVs. He believes the City should then be able to go in Walmart and rope that off and asked how this is fair to the other local businesses selling the same products. He commented people have better chances of picking up this disease at other places as the Board is still talking about daycares, food chains, trucks delivering and stopping at truck stops, so the Board cannot stop this. It is short-sighted to think it can stop this, because all people can do is mitigate it. Mr. Durlin explained there are better, smarter and more experts talking to the Governor than there are talking to the Board and is why he's made the decisions he has. He urged the Board to listen and take cues from that leadership and asked for clarification about the Governor wanting to shut everything down statewide. Discussion.

Mayor Akers asked for comments from the Board. Discussion. Mayor Akers called for a vote on Bill No. 5807 as amended. Voting aye: Clonts, Simmons, Skains, Milton and Castillon. Nays: McConnell. Motion carried. Alderman Clonts moved to read Bill No. 5807 for its Final Reading due to recent CDC guidelines surrounding COVID-19, seconded by Alderman Skains. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried. Final Reading of Bill No. 5807, an ordinance amending Chapter 58 of the Branson Municipal Code pertaining to public gatherings, social gatherings and essential businesses was read by title by City Clerk Lisa Westfall. Mayor Akers asked for a motion approving Bill No. 5807 as amended. Alderman Clonts so moved, seconded by Alderman Milton. Mayor Akers asked for anyone in the audience wishing to speak regarding this matter. Hearing none, Mayor Akers asked for comments from the Board. No discussion. Voting aye: Clonts, Simmons, Skains, Milton and Castillon. Nays: McConnell. Motion carried. Ordinance No. 2020-0052 was duly enacted.

ADJOURN

Mayor Akers asked for a motion to adjourn. Alderman Skains moved to adjourn, seconded by Alderman Castillon. Voting aye: McConnell, Clonts, Simmons, Skains, Milton and Castillon. Nays: none. Motion carried. Meeting adjourned at 7:08 p.m.



E. Edd Akers

Mayor



Lisa Westfall

City Clerk