

**SPECIAL COMMITTEE OF THE WHOLE MINUTES
NOVEMBER 23, 2020 at 7pm**

ELECTED OFFICIALS/STAFF PHYSICALLY PRESENT:

Mayor Kevin Burns, City Admin. Stephanie Dawkins, Asst. City Admin. Ben McCready

ELECTED OFFICIALS PRESENT VIA REMOTE ATTENDANCE: Ald. Mike Bruno, Ald. Tara Burghart, Ald. Becky Hruby, Ald. Gabe Kaven, Ald. Dean Kilburg, Ald. Brad Kosirog, Ald. Craig Maladra, Ald. Richard Marks, Ald. Jeanne McGowan, Ald. Robert Swanson

STAFF PRESENT VIA REMOTE ATTENDANCE: Police Chief Eric Passarelli, City Attorney Ronald Sandack, Deputy Clerk Jeanne Fornari

1. CALL TO ORDER

Mayor Burns called the meeting to order in City Hall Council Chamber at 7pm. Burns gave introductory remarks regarding the subject of the meeting, noting he had received numerous calls and emails over the course of the last two weeks from members of the public who were concerned with the amount of restaurants and bars and other businesses that were not complying with the Governor's most recent Covid mitigations. Burns then shared with the committee a timeline of events in planning for this meeting, including communication with the committee, and how the draft ordinance was modeled after a recent ordinance that was approved in Rockford, IL, another non home-rule city. Before opening the floor to discussion, Burns stated he was looking for clear consensus from the committee and noted that there was not a staff recommendation tied to this ordinance.

2. CONSIDER DRAFT ORDINANCE AMENDING TITLE 5 (HEALTH AND SANITATION) OF THE GENEVA CITY CODE.

Moved by Ald. Bruno, seconded by Ald. Hruby

Discussion centered on weighing the public good vs. supporting the economy, the philosophy of fining non-compliant businesses vs. rewarding compliant businesses, responsibilities of enforcement by the State and County, and effects of enforcement on the police force. On a question by Ald. Kaven, City Attorney Sandack noted that the ordinance was drafted to inoculate the City from lawsuits and did not foresee this to be an issue based on the language of the ordinance and State statute. On a question from Ald. Burghart, Burns relayed general information he had obtained regarding the local hospitalization rates and capacity numbers.

Ald. Swanson offered to amend the motion to pool the monies collected from the fines to assist small businesses. Ald. Maladra offered a second to the motion. Discussion on the motion centered on how the city would execute such a program and the process and time that would be involved in devising the program under current constraints.

ROLL CALL ON THE MOTION TO AMEND ORDINANCE TO ADD LANGUAGE DIRECTING FUNDS RECEIVED TO SMALL BUSINESSES:

Ayes: 6 (Bruno, Burghart, Kaven, Maladra, Marks, Swanson)

Nays: 4 (Hruby, Kilburg, Kosirog, McGowan)

Motion passed.

A brief recess at 8:29pm was offered by Mayor Burns, with the meeting coming back to order at 8:30pm. Comments from the public were then heard – all in opposition to the draft ordinance as amended. Comments were heard from Foxfire owner K.C. Gulbro and his attorney Greg Earl; Del Barrio owner Miguel Villanueva; and Aurelio's owner Arnie Silvestri. Additional comments in opposition were heard by those attending remotely: John Rittenhouse, Robert Johnson, Matthew Karras.

After comments were heard, Ald. Bruno offered a motion to amend the main motion (as amended) that would put a 'stay' on the enactment of the ordinance, if passed, until neighboring communities enact a similar ordinance. The motion failed due to lack of a second.

Ald. Swanson offered an amendment to delay a vote to the December 7, 2020 Committee of the Whole meeting. Ald. Hruby offered a second.

Mayor Burns cautioned against delaying a decision noting that it accomplished nothing and signaled uncertainty on consensus. There was a brief discussion on whether to delay a vote.

ROLL CALL ON THE MOTION TO AMEND TO DELAY VOTE UNTIL DECEMBER 7, 2020

Ayes: 3 (Burghart, Hruby, Swanson)

Nays: 7 (Kaven, Kilburg, Kosirog, Maladra, Marks, McGowan, Bruno)

Motion failed.

ROLL CALL ON MAIN MOTION AS AMENDED – WITH FUNDS RECEIVED FROM VIOLATIONS GOING TO SMALL BUSINESSES with specific language to be included at the December 7 City Council if passed.

Ayes: 3 (Hruby, Swanson, Burghart)

Nays: 7 (Kaven, Kilburg, Kosirog, Maladra, Marks, McGowan, Bruno)

Motion failed.

Burns thanked the committee for their frank discussion and willingness to confront a very difficult issue.

3. NEW BUSINESS/PUBLIC COMMENT

Ald. Kilburg and Ald. Kosirog expressed interest in accelerating the discussion on how to help businesses during the pandemic. Ald. Bruno pledged to support those businesses who were in compliance with mitigation rules.

4. ADJOURNMENT

Moved by Ald. Kaven to adjourn.

ROLL CALL:

Ayes: 10 Nays: 0

Motion passes. The meeting was adjourned at 9:56pm.

-respectfully submitted by Deputy Clerk Fornari

November 23, 2020 Remarks to the Committee of the Whole:

Good evening Alderwomen and Aldermen, our residents, businesses and interested parties from near and far who are tuned in to this broadcast.

Please indulge me as I deliver some preliminary remarks to help appropriately frame the discussion and establish context.

On Thursday, November 19th at 1:52 PM I emailed the City Council the following:

From: "Burns, Kevin" <kburns@geneva.il.us>

Date: November 19, 2020 at 1:52:07 PM CST

To: ALDERMEN & MAYOR <ALDERMEN&MAYOR@geneva.il.us>

Cc: ADMINISTRATOR & DEPARTMENT HEADS

<ADMINISTRATORANDDEPARTMENTHEADS@geneva.il.us>, "Fornari, Jeanne"

<jfornari@geneva.il.us>, "Tracy, Cate" <ctracy@geneva.il.us>

Subject: Request for Consideration & Availability to Participate in Special City Council Meeting November 23, 2020 for the Express Purpose Stated Below

TO AVOID VIOLATING THE ILLINOIS PUBLIC MEETINGS ACT PLEASE DO NOT RESPOND ALL

Ladies & Gentlemen,

Over the course of the last few weeks, I've spoken to some of you and received information from others, about rising concerns from residents, businesses and guests in our community querying "What can Geneva do to better educate and enforce the directives enumerated in Governor Pritzker's & the IDPH's Executive Orders?"

To best address the options we have at our disposal, I'm asking if you'd be interested in and available for a Special City Council meeting on Monday, November 23 for the express purpose of discussing and considering adoption of a "Public Nuisance Ordinance" (as other communities have done and/or are considering doing) granting our Police Department the authority to issue Ordinance Violations to individuals and/or business who are violating the Governor's/IDPH/s Executive Orders.

I kindly ask that you send a note to Stephanie confirming your interest and availability to participate in such a meeting (virtually of course) by 3:00 o'clock tomorrow, Friday, November 20th so we have the requisite amount of time to notice a meeting under the Illinois Public Meetings Act for Monday, November 23rd at 7:00 PM.

Thank you!

KB c: 630-742-8916

Each and every Alderwoman and Alderman responded with both “interest and availability” and hence, a quorum was reached and this meeting was scheduled. And it’s important to note that the all the elected officials are present this evening.

On Friday, November 20th, at 12:39 PM tonight’s Meeting Agenda & Packet was posted online and sent to the Alderwomen & Aldermen. Included in the packet was an Executive Summary (standard operating procedure) and DRAFT Ordinance (also standard operating procedure).

The Executive Summary of a proposed Enhanced Mitigation Ordinance includes the following:

The draft ordinance presented for the Committee of the Whole’s consideration provides the City a tool with which to enforce the Governor’s Executive Orders issued in furtherance of the public health, safety, and welfare.

If adopted, violations of any lawfully issued Executive Order could be declared a public nuisance. Any person accused of a violation may settle and compromise the claim of violation by paying a fine:

- First Offense - \$100*
- Second Offense - \$250*
- Third and subsequent Offenses - \$500*

If the Committee of the Whole desires, the ordinance (either in current form or an amended form) could proceed to the December 7, 2020 City Council meeting.

Please note...this is NOT a discussion about “restaurants and bars only” as some have contended. There is no language in the Executive Summary or DRAFT Ordinance that identifies restaurants and bars exclusively.

As calls and emails started to flood in to our staff, the Alderwomen and Aldermen as well as myself, I sent the Council a note explaining how I was responding to the multiple inquires. That email reads as follows:

From: "Burns, Kevin" <kburns@geneva.il.us>
Date: November 22, 2020 at 12:39:56 PM CST
To: ALDERMEN & MAYOR <ALDERMEN&MAYOR@geneva.il.us>
Cc: ADMINISTRATOR & DEPARTMENT HEADS
<ADMINISTRATORANDDEPARTMENTHEADS@geneva.il.us>, "Tracy, Cate"
<ctracy@geneva.il.us>, "Fornari, Jeanne" <jfornari@geneva.il.us>, Ron Sandack
<rsandack@gaido-fintzen.com>
Subject: Transparency & Accountability Regarding Tomorrow Night's (11/23/2020)
Discussion

TO AVOID VIOLATING THE ILLINOIS OPEN MEETINGS ACT PLEASE DO NOT RESPOND ALL

Ladies & Gentlemen,

I imagine you too are receiving calls and emails about the nature of tomorrow night's discussion and, like you, I'm sure some of the calls and emails are, dare I say, intense.

Therefore, in the spirit of full transparency and for your benefit, I' have responded to all the email messages, texts and phone calls I've received with the following message:

"Monday' night's Special Committee of the Whole discussion is taking place because of a rise the number of questions over the course of the last few weeks to City Council members and professional staff - including police officers - about what the City of Geneva is doing to help reduce the transmission rate of Covid-19 and what more can be done, if anything. We have received calls from retailers, restauranteurs and shoppers alike. Therefore, now is the time for the City Council to have a robust and frank discussion about what more it wants to consider within the ramparts off state and local laws. There are, for all practical purposes, two "camps" in Geneva; the first is the "you need to do more" camp" and the other is the "continue to do what you're doing" camp."

The former approach is best described in the DRAFT ordinance included in our Special Committee of the Whole packet for Monday, 11/23; do we, shall we, must we pursue a more aggressive approach to seek compliance with the face masks, social distancing, large gatherings, etc as enumerated in the Tier 3 Resurgence Mitigation Efforts.

The DRAFT ordinance DOES NOT INCLUDE A STAFF RECOMMENDATION and nor should it.

The later approach, "continue doing what you're doing" is best captured/summarized by the Three R's: Respond to alleged violations; Remind the alleged violator of the Tier 3 rules and, Relay said contact with the business to the Kane County Health Department/States Attorney's Office for follow-up.

I have invited everyone who has reached out to me to participate in tomorrow night's meeting assuring them that their voice is important, respected and desired.

As always, feel free to call, text or email me with any questions or comments.

KB

c: 630-742-8916

Finally, let me add this....tonight, the City of Geneva Council Chamber is once again serving as the Communities Kitchen Table...the place that families often choose for conversations that require the full attention of all participants, respect for all opinions and our best efforts to come to consensus as a family on how to move forward.

With that, the question on the floor this evening is, again, best summarized as choosing between: whether we "continue doing what we're doing" (as enumerated above using the Three R's) or consider "doing more" as presented in the DRAFT ordinance.

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From: [Bob Johnson](#)
To: [Public Comment](#)
Subject: ? Good Luck
Date: Monday, November 23, 2020 1:56:14 PM

The community backlash will be harsh and swift. I will do my best to help it happen.

Bob Johnson
Local Business Advocate
Co-Founder
KeepLocalAlive
630-715-6241

From: [Michelle Langworthy](#)
To: [Public Comment](#)
Subject: 11/23 Meeting
Date: Monday, November 23, 2020 5:07:38 PM

Dear Counsilmen and Counsilwomen,

I am writing to implore you to maintain freedom of choice and to not fine restaurants and small businesses that choose to remain open. We must step back from the fear mongering and look at things from a whole perspective. The collateral damage to families, mental health, our town's economy, people's livelihood and ability to put food on the table, our children's sense of "normalcy," - has become far greater than the damage of the covid virus.

We all know the death rate from covid is EXTREMELY low. So the concern is the climbing number of hospital beds in use. Did you know that region 9, with 1,665,702 people, only has ICU beds and staff for .0149% of the population? Therein lies the problem. Beds and staff should have been amply increased before flu season hit. Restaurants and small businesses cannot be punished for this oversight. As should have been the way from day one - HEALTHY people need to maintain the right to keep our economy and liberties afloat. The choices we make aren't one-size-fits-all.

Regards,
Michelle Langworthy

From: [Elizabeth Kolkay](#)
To: [Public Comment](#)
Subject: Covid mitigations
Date: Monday, November 23, 2020 6:34:47 PM

Dear Geneva government.

As a member of the 4th ward I'd like to express my extreme concern about the closures and shutdowns. I recognize that covid-19 is scary and we are all anxiously waiting for this to be behind us. With that said I am begging that you not enforce additional closures on our local businesses and restaurants. Please do not fine them or people for making personal choices and freedoms. Shutting down the stores and restaurants again will crush our beautiful town. All of the businesses have been following protocols efficiently. So many of them have spent a lot of money to be allowed to open back in May/June by purchasing tents, heaters, ventilators, etc.

Please keep them open. Allow healthy people to dine indoors spaced out like they have been. If crowded bars are the concern I understand but sitting 6 feet apart is ok! Local shopping is just as risky as shopping at Walmart if not less because way less people are inside our stores.

Please do not destroy our store owners livelihoods. Not only will that hurt them and their employees but will also cause them to possibly close for good.

Keep Geneva open please!!! I am begging you to listen.
Thank you so much.
Sincerely
Elizabeth Kolkay

Sent from my iPhone

From: [Brittany Smith](#)
To: [Public Comment](#)
Subject: Feedback-proposed ordinance
Date: Monday, November 23, 2020 5:02:04 PM

Hello:

I'm a resident of Geneva, and saw the proposed language for a new ordinance in Geneva for restaurants and businesses that remain open. I'm strongly opposed to this and have serious questions about the legality of its intent:

Given that the ordinance stipulates that fines can be issued in support of "any lawfully issued executive order", why would this be something to support? Most citizens are educated enough to know that his orders have not been upheld by the courts, and these actions will carry no weight but further alienate the city's tax base and invite legal fees for potential court cases when businesses rightfully so challenge the fees. Is this worth taxpayer money to push an ordinance most know won't be legally defensible?

Additionally, does the IL constitution even allow for this type of regulation? Given that the home rule doesn't apply in Geneva, authority for this must stem from law, not from an executive order:

“SECTION 7. COUNTIES AND MUNICIPALITIES OTHER THAN HOME RULE UNITS

Counties and municipalities which are not home rule units shall have only powers granted to them by law and the powers (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services. (Source: Illinois Constitution.)”

So again we will be out back to the city incurring fees for legal work on a policy that is not enforceable while demonstrating to current and future businesses that we are not business friendly.

Finally, what is the rationale for this penalty? What data is being used? Statewide mandates have been proven unenforceable, and metrics unreliable. What data are you using to justify the penalizing of hard working and tax paying citizens of Geneva?

Shut downs and lockdowns in theory only protect small groups of people, but they harm across the spectrum. Please continue to appeal logic and reason and trust Geneva to do right by our medical community, business community and neighbors.

Thank you,
Brittany Smith
Geneva resident

From: [Julia Filipski](#)
To: [Public Comment](#)
Subject: Public Comment on Rule Modification Due to COVID-19 – 11/23 Meeting of the Committee of the Whole
Date: Monday, November 23, 2020 6:12:17 PM

Hello –

I am providing comments related to the following meeting:

- **Date:** Monday, November 23, 2020
- **Meeting Name:** SPECIAL COMMITTEE OF THE WHOLE
- **Agenda Item:** Consider Ordinance Amending Title 5 (Health and Sanitation) of the Geneva City Code by adding Chapter 4 (Public Health).
- **Name:** Julia Filipski, Geneva, IL Resident, Ward 3
- **Comments:**

As a resident of the City of Geneva, IL, I am writing to express my **disapproval** of the proposal to amend the Health Ordinance (Title 5) of the City of Geneva to make it “unlawful for any person, partnership, joint adventure, association, society, club, trustee or corporation or any officer, agent, employee, factor or any kind of personal representative to violate any Executive Order of the Governor of the State of Illinois”.

I am expressing my disagreement for several reasons:

1. **Due Process.** It deprives local business owners and individuals of their rights to due process as protected under the Illinois Constitution. For example, in the proposed ordinance, any person merely “*accused* of a violation” without a substantiated claim may potentially face fines, and costly litigation for the fined and the city.
2. **First Responder Resources.** The enforcement of this amendment would redirect our resources of our police and other emergency personnel away from core government services.
3. **Local Constituent Needs.** Having a statewide executive order applied in a blanket manner does not take into account local differences in public opinion and needs of your constituents. This type of policy has driven Illinois residents to leave Illinois at a rate greater than any other state in history.
4. **Economic Impact.** In order to support our economy, businesses need to remain open. They are owned by and employ thousands of local residents who each have a vote in your next election. Furthermore, business owners and their employees need to support their families and have the opportunity to leave positive, lasting contributions to the community. In addition, if business cannot afford their rent and/or are otherwise evicted, the resulting vacancies would be a detrimental blight upon our community.

Sincerely,
Julia Filipski

From: [Roger Karas](#)
To: [Public Comment](#)
Subject: Public comment regarding Draft Ordinance Amending Title 5 (Health and Sanitation) of the Geneva City Code
Date: Monday, November 23, 2020 4:18:16 PM

This proposal to fine people/businesses for China Virus Restriction Violations is startling even by looney liberal standards. Who in Geneva originated this wacky proposal?

Roger Karas
202 Timbers Trail
St Charles, IL 60174

From: [Roger Karas](#)
To: [Public Comment](#)
Subject: Re: Public comment regarding Draft Ordinance Amending Title 5 (Health and Sanitation) of the Geneva City Code
Date: Monday, November 23, 2020 5:18:37 PM

Additional public comments: With high property taxes and high state income taxes already, I really don't need any more reasons to want to move out of Illinois.

Geneva, an adjacent city to St Charles, to the south is considering fines for violators of state (governor) mandated China Virus Restrictions.

I'm generally no fan of defunding the police, but if the police have time on their hands to now play mask police, then it's time to lower their budget and get rid of their surplus employees.

Geneva/St Charles in the far west suburbs of Chicago was fairly conservative a few years ago. Unfortunately the looney left ideology from Chicago has been drifting to the suburbs over the years. This proposal is yet another indication of that leftist ideology gone amuck.

On Mon, Nov 23, 2020 at 4:17 PM Roger Karas <rogerdkaras@gmail.com> wrote:

This proposal to fine people/businesses for China Virus Restriction Violations is startling even by looney liberal standards. Who in Geneva originated this wacky proposal?

Roger Karas
202 Timbers Trail
St Charles, IL 60174