



**City Council - Meeting Agenda**  
**May 21, 2020 - 5:30 P.M. - Foley City Hall**

**Public Access Information:**

**Call: 1-602-610-2084**

**Enter Conference Code: 543340**

1. Call the meeting to order.
2. Pledge of Allegiance.
3. Approve the agenda.
4. Consent Agenda:
  - Approve minutes of May 5, 2020
5. Discussion/Approve Quality of Life - Drive-In Movies - July 16<sup>th</sup> & August 20<sup>th</sup> - Foley Fieldhouse Parking Lot
6. Discussion on Foley Municipal Pool
7. Discussion on City Hall/Foley Library Re-Opening
  - Meeting Room Use/Reservations
8. Department Reports:
  - Police Department -Katie McMillin
  - Public Works & Fire - Mark Pappenfus
    - Park Shelter Reservations for 2020 Season.
  - Administration - Sarah Brunn
9. Old Business
  - Update on wastewater project/bonding bill.
10. New Business
  - Discussion on small business support resolution.
11. Adjourn

CITY OF FOLEY, MINNESOTA  
CITY COUNCIL MEETING – May 5, 2020  
HELD VIA CONFERENCE CALL DUE TO COVID-19 PANDEMIC

The Foley City Council held a regular meeting on May 5, 2020, at 5:30 p.m. at the Foley City Hall.

Members Present: Mayor Gerard Bettendorf, Councilmembers Jeff Gondeck, Rosalie Musachio Gary Swanson and Jack Brosh.

Members Absent: None

The pledge of allegiance was recited.

Motion by Gondeck, seconded by Swanson, to approve the agenda. Swanson – aye, Brosh – aye, Musachio – aye, Gondeck – aye, Bettendorf – aye. Motion carried, unanimous.

**Consent Agenda**

Motion by Musachio, seconded by Gondeck, to approve the consent agenda, which includes the following:

- Approve minutes of April 7, 2020
- Adopt Ordinance #450 – Council Salaries – previously approved but not in effect until 2021.
- Approve payment of bills paid for by checks #52066-#52185.

Swanson – aye, Brosh – aye, Musachio – aye, Gondeck – nay, Bettendorf – aye. Motion carried.

**Discussion on Foley Municipal Pool**

City Administrator Sarah Brunn indicated Adam Foss and Jesse Roehl submitted comments in support of continuing with opening the pool and the Foley Fun Days festival. If Fun Days is not held in June, they asked for consideration of another day later in the summer.

Brunn gave an overview of the discussion from the last meeting. Musachio indicated concerns with meeting social distancing guidelines at the pool. Swanson indicated support to open up if guidelines conclude it can be done safely. Brosh asked if the decision could be postponed and if another meeting could occur later this month to determine if the pool could open after the governor makes a decision on stay at home order. Musachio indicated support with a second meeting. Mark Pappenfus, Public Works Director, indicated staff could work with that timeline. Motion by Gondeck to table a decision until mid-May if the stay at home order is lifted, if not the pool will close. There was discussion on unemployment, staffing and lesson revenues. The motion was seconded by Swanson. The mayor clarified the motion for Musachio. Gondeck – aye, Swanson – aye, Brosh – aye, Musachio – aye, Bettendorf – aye. Motion carried.

**Discussion on Foley Fun Days**

There was discussion on Fun Days and an updated was provided by Juanita Beauchamp, Chair of the Foley Civic Group. Brosh asked if postponing was an option and Beauchamp indicated a preference to cancel and not make any commitments on postponing. There was discussion on the risk of how soon the event would occur and the amounts of people it would draw from all over the place. Motion by Musachio, seconded by Swanson, to deny use of the streets for the festival (ultimately cancelling) Foley Fun Days. Brosh – aye, Swanson – aye, Musachio – aye, Gondeck – aye, Bettendorf – aye. Motion carried.

### **Discussion on Closing Streets for Tractor Day and Graduation**

High School Principal Shayne Kusler was on the call and gave an overview of the request for closing Penn Street for a tractor day parade on May 22 and graduation on May 30. Kusler reviewed the tentative plans, but indicated they would comply with any state orders or guidance that would be provided in the future. Staff indicated no concerns with the closure as long as compliance with the state orders occurs. There was some discussion on the locations of spectator cars and maintaining social distancing. Motion by Swanson, seconded by Gondeck, to approve the closure for both dates. Gondeck – aye, Musachio – aye, Brosh – aye, Swanson – aye, Bettendorf – aye. Motion carried.

### **Department Reports**

Chief McMillin indicated a written report was provided prior to the meeting. McMillin presented the monthly call report. Gondeck asked how social distancing violations are handled and Musachio questioned violations of the state orders. McMillin indicated the department is educating, which was the direction provided by the governor.

City Engineer Jon Halter updated the council on the trail project and alley repairs. Gondeck questioned if the alley would still be covered next year if the repairs do not work and Halter indicated it would be. Pappenfus indicated they have stressed how the city council must be satisfied with the outcome of the project.

Mark Pappenfus, Public Works Director updated the council on the activities of the department and also indicated the old play structure at Lion's is almost gone. Pappenfus also indicated staff could open parks for playground and open-air structure use at your own risk based on advice from the League. The council agreed to sign and proceed with this change. The council was in agreement that bathrooms should remain closed. Pappenfus requested two summer help and also permission to proceed with parking lot maintenance at the fire hall and street maintenance on Penn Street/County 43 as the budgeted street maintenance accounts allow. The council agreed to the maintenance projects per the budget.

Fire Chief Mark Pappenfus presented information that does allow for some fire training to move ahead if they can abide by social distancing guidelines. Pappenfus also requested if fire helmets can be taken by existing firefighters as new helmets were recently purchased.

City Administrator Sarah Brunn requested direction on how to handle the parking surfaces ordinance enforcement. The council requested letters to be sent but to hold off on any prosecution. The council also directed staff to hold off on any shut-offs for now, the council will need to decide on late fees at the next meeting. Brunn also presented some ideas regarding a re-opening plan, which includes phased re-opening and installation of a plexiglass shield on the front counter. The council indicated support with phasing re-opening once it is allowed in order to balance the safety of both staff and the public. Brunn also gave an overview of some budget concerns if tax collections are lower and with additional needs to handle the COVID-19 pandemic. Brunn has asked the department heads to re-evaluate purchases to make sure only essential are moving forward at this time until we get a better handle on the long-term effects. Some of the council indicated we may need to hold off on equipment purchases in the future.

### **Old Business**

Brunn indicated the conference call with the governor's office on the wastewater project went well. Brunn stressed it is very important for the council to be emailing, calling and staying in touch with their legislators the next week and a half as the session draws near and a possible bonding bill comes

forward. There is talk that a bonding bill will be blocked by Republicans if Walz keeps the state orders in place.

Motion by Gondeck, seconded by Swanson, to adjourn. Swanson – aye, Brosh – aye, Musachio – aye, Gondeck – aye, Bettendorf – aye. Motion carried, unanimous.

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Sarah A. Brunn, Administrator

# City Resolutions Supporting Local Businesses Create Questions and Unknown Risks

Published: May 14, 2020

Even with the lifting of Gov. Tim Walz's stay-at-home order, the continuing restrictions on certain businesses — and the varying impacts on communities across the state — are placing many city officials under pressure to express formal support for businesses that don't comply with the restrictions, most commonly in the form of a council resolution.

City resolutions and other affirmative actions taken by local governments in a pandemic are without precedent in modern times. The consequences of non-enforcement of COVID-19 emergency executive orders are unknown and untested.

## Limit your city's exposure

For these reasons, the League urges cities to exercise restraint against adoption of resolutions or other actions that may expose the city and its officials to civil and/or criminal liability. We also urge cities to consult with their own attorney before taking any official action. Interpretation of current law to particular circumstances and with respect to particular language in a resolution should be left to the city attorney, who is in the best position to weigh all factors.

Finally, we encourage cities to reach out to their state and federal elected officials and provide information and examples of the specific negative impacts happening in their communities now — and expected to happen in the future — due to COVID-19 rules, guidelines, and restrictions.

## Additional considerations

Here are some additional points city officials may want to evaluate and discuss with their legal counsel when considering formal resolutions and other actions:

- A city does not have authority to change a state law or be less restrictive than state law, unless the law specifically allows for it. Local units of government, including cities and their officers, have only those powers that are granted by the Legislature either expressly or by reasonable implication. Any action passed by a city council should be evaluated within this scope of authority principle.
- A city will want to consider all implications, including potential liability for damages and civil penalties, for decisions made regarding non-enforcement of executive orders. Since such actions are without precedent and thus legally untested, cities may be assuming potential liability for unknown and completely novel legal claims and other risks. In addition, whether these risks can be successfully tendered to the League of Minnesota Cities Insurance Trust (LMCIT) for claims coverage is also unknown. If there is no ability for LMCIT to provide coverage, the city could be left paying for litigation costs and damages out of its own pocket.
- Minnesota Attorney General Keith Ellison has communicated that he will enforce executive orders, if necessary, but the state has not provided any other specific insights on how it will respond if a local government makes an affirmative decision not to enforce the orders. Also, business owners and employees who act in violation of executive orders could still face criminal charges or administrative penalties (such as license revocation) if they open their businesses in violation of an executive order.

## Alternative types of resolutions

There are many examples of cities passing alternative types of resolutions that reduce or eliminate the above risks. These actions explicitly acknowledge the city's support for local businesses while strongly encouraging the governor to lift or further relax restrictions.

The League has copies of some of these resolutions and can provide them upon request. To make such a request, contact the LMC Research Department at [research@lmc.org](mailto:research@lmc.org) (<mailto:research@lmc.org>).

—Access more COVID-19 News and Resources (<https://www.lmc.org/resources/covid-19-resources/>)

Your LMC Resource

**Patricia Beety**

**General Counsel**

(651) 281-1270 or (800) 925-1122

[pbeety@lmc.org](mailto:pbeety@lmc.org)

CITY OF FOLEY  
COUNTY OF BENTON  
STATE OF MINNESOTA

RESOLUTION 2020 - 09

A RESOLUTION DECLARING SUPPORT FOR SMALL BUSINESS

**WHEREAS**, Governor Tim Walz declared a Peacetime State of Emergency on March 13, 2020;  
and

**WHEREAS**, Governor Tim Walz issued an executive order on March 16, 2020 closing bars, restaurants, and places of accommodation to on-site service;

**WHEREAS**, the City of Foley business community does not consist of “big box” stores or large national franchises, instead it consists largely of locally-owned, independent small businesses;

**WHEREAS**, the City of Foley, prior to the pandemic, has invested significant time and resources is fostering a business environment that is friendly to and supportive of small businesses, including bars, restaurants, salons and barbershops and entertainment;

**WHEREAS**, small businesses are an essential component of the economy within Foley and have suffered greatly as a result of the closure order;

**WHEREAS**, the City has heard from numerous small-business owners during the closure explaining the extreme financial hardship the closure is inflicting, the threat to business survival, and seeking whatever assistance the City can provide;

**WHEREAS**, the City of Foley is greatly concerned about the long-term damage that the closure is causing on small businesses and the likelihood that it will undue decades of progress that Foley has worked hard to achieve; and

**WHEREAS**, the City of Foley is committed to small businesses in Foley and intends for this resolution to outline and reaffirm that commitment.

**NOW, THEREFORE, MAYOR BETTENDORF OF THE CITY OF FOLEY PROCLAIMS, DECLARES, REQUESTS, AND DIRECTS AS FOLLOWS:**

1. LOCAL SUPPORT. The Foley City Council explicitly supports each and every small-business within the City. The City Council acknowledges that small-businesses are the lifeblood of the community and a weakened business community weakens the wider community by reducing employment and eliminating local options. The Foley City Council supports all local, state, and federal efforts to re-open small businesses and provide assistance to prevent small-businesses from shutting permanently.

2. GOVERNOR. The Foley City Council calls on the Governor to open bars, restaurants, salons and barbershops and entertainment venues as soon as reasonably possible to in order prevent permanent closures. The Foley City Council calls on the Governor to be creative and innovative in employing measures to re-start the economy by allowing small-businesses get back to business.
3. LEGISLATURE. The Foley City Council calls on the Legislature to create additional funding and programs to support small businesses. The Foley City Council calls on the Legislature to transcend partisan divides and work together with the Governor to get small-businesses get back in business.
4. CITY FUNCTIONS. The City of Foley is committed to assisting small businesses during the emergency and directs staff to continue to explore and employ whatever means possible to make changes to City functions and procedures in order to help small businesses survive this emergency.

Approved and effective this 21<sup>st</sup> day of May, 2020

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Gerard L. Bettendorf, Mayor

ATTEST:

\_\_\_\_\_  
Sarah A. Brunn, City Administrator



**TO:** FOLEY CITY COUNCIL  
**FROM:** SARAH BRUNN, CITY ADMINISTRATOR  
**SUBJECT:** 05-21-2020 COUNCIL MEETING – 5:30PM  
**DATE:** MAY 18, 2020

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**This meeting will be held at Foley City Hall. Social distancing will be practiced and the public will not be allowed to attend in person. Conference call information for the public is available:**

**Call: 1-602-610-2084**

**Enter Conference Code: 543340**

### **Quality of Life – Drive In Movies**

We were contacted by the Foley Quality of Life Task Force about holding drive-in movies in the north fieldhouse parking lot at the school on July 16<sup>th</sup> and August 20<sup>th</sup>. These events would replace the park parties that were scheduled prior. The cars would be spaced appropriately and no concessions would be sold and no bathrooms would be available. The movie might go slightly past noise ordinance but, in most cases, they are cleaned up between 10:30pm-11:00pm. They have also made plans to not direct the sound towards the homes nearby. They are also getting permission of the school to hold these events as well. Staff has no concerns so long as they abide by any state orders in place. We are asking the council to approve in the instance it does go slightly past the time of the noise ordinance. They are also asking if the council would approve an additional movie in June if they decided to proceed with it since Foley Fun Days is cancelled.

### **Foley Municipal Pool**

We continue to work on plans for the opening of the Foley Pool. Right now, the current state order prohibits pools from opening but there will be an additional loosening of restrictions on June 1<sup>st</sup>. We hope to have additional information some time on Wednesday regarding this.

Staff is working on preparations regarding cleaning and sanitation schedules, open swim and swimming lessons schedules and procedures. Staff has also been in touch with the Red Cross on how to handle swimming lessons. With the younger ages, more contact is made so protocol is uncertain with social distancing guidelines.

We will also have our pool manager at the meeting to participate in the discussions.

### **Foley City Hall/Foley Library Re-Opening Plan**

With the lifting of the stay at home we are evaluating our current closure and how to safely re-open. I have checked with other cities and counties and the process varies with each location. Some have completely opened up, others are remaining closed to the public, and others are slowly transitioning. I've also been in touch with Great River Regional Library System on their re-opening plans and goals.

Cleaning and social distancing are concerns with re-opening. We need to follow CDC guidelines to protect both the staff and general public. We will be adding additional cleaning as our building is accessed more. We also need to be mindful of how the traffic flows in our hallway areas, which are narrow by the door. It is likely that even with things opening up further on June 1<sup>st</sup>, social distancing will still be recommended.

I have some ideas for a phased re-opening. I'm waiting to gather more information from the library and will present those ideas at the meeting on Thursday. We'll also need to discuss how we handle meeting room use and shelter reservations for the year.

### **Wastewater Update**

The legislature failed to pass a bonding bill before the end of session. They are anticipated to be called back in June to address it again. I can provide more of an update on the session at the meeting.

### **Small Business Support Resolution**

It has been brought to my attention on if the council would consider a resolution supporting the opening of small businesses, prior to the state order allowing. I have some guidance on this from the League and also included sample resolution language that could be considered if the council wishes to discuss this matter.

### **Open Forum**

I have not placed an open forum on the agenda. I will be posting conference call info and the meeting will be accessible to the public by phone. Because of limits of 10 people we will not allow the general public to be physically present.

### **2020 Elections**

We are planning on moving ahead with elections on August 11<sup>th</sup> and November 3<sup>rd</sup>. Filings for the city council positions will open on July 28<sup>th</sup> and close on August 11<sup>th</sup> @ 5pm.

### **Upcoming Reminders:**

**June 2, 2020** – City Council Meeting

**June 8, 2020** – Planning Commission Meeting