

Note: Due to COVID-19 issues, City Hall will not be open to the public. Remote participation is being implemented using Zoom meeting software. Necessary login information is provided below the agenda. To participate via video, it is necessary to download the ZOOM app. It is not necessary to have the app to call in and participate without video.

**CITY OF SALEM
6:00 PM REGULAR CITY COUNCIL MEETING
May 18, 2020 – 6:00 PM**

- I. Call to Order**
- II. Prayer and Pledge of Allegiance**
- III. Presentation of Petitions/Public Comments**
- IV. Mayor’s Report and Presentations**

- V. City Council Action**
 - 1. Consent Agenda
 - a. City Council Minutes – 5/04/2020

 - 2. Update from Marion County Health Dept. on COVID-19 Pandemic
 - 3. Resident Request for City to “Re-open” Against Governor’s Executive Order
 - 4. Second Reading – Ordinance against the feeding of wildlife within the City Limits
 - 5. Extension of contract for services for landfill with AECOM
 - 6. Approval of payout #4 for JK Trotter on Sanitary Sewer Project
 - 7. Recommendation from Planning Commission for Special Use Permit
 - 8. Approval of accounts payable for period of April 20 to May 15

- VI. City Manager Report**
- VII. City Attorney Report**
- VIII. Finance Director Report**
- IX. City Council Members Report**
- X. Executive Session**
 - 1. 5 ILCS 120/2(c)(1) - Personnel

- XI. Motion to Adjourn**

Rex A. Barbee
City Manager
RAB

Quote of the day –
Obstacles are those frightful things you see when you take your eyes off your goal. – Henry Ford

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**MINUTES
REGULAR CITY COUNCIL MEETING
MONDAY, MAY 18, 2020 – 6:00 PM
(Held remotely using Zoom meeting software)**

- I. CALL TO ORDER**
The regular May 18, 2020 meeting of the City Council was convened at 6:00 pm via video conferencing, and was called to order by Mayor Sue Morgan.
- Council members present via Zoom:**
Councilman Jim Koehler
Councilman Nic Farley
Councilman Craig Morton
Councilman Jacob Hockett
Mayor Sue Morgan
- Council members absent:** None.

Others present:

City Manager Rex Barbee	City Clerk Bev Quinn
Public Works Director John Pruden	Chief of Police Sean Reynolds
Economic Dev. Director Tabitha Meador	Finance Director Keli Barrow
Chamber Director Jessickya Nix Coleman	DOEM Director Terry Mulvany
Brock Waggoner	Members of the Media and Public

II. PRAYER AND PLEDGE OF ALLEGIANCE

Opening prayer was offered by Councilman Koehler, followed by the Pledge of Allegiance.

III. PRESENTATION OF PETITIONS/PUBLIC COMMENTS - None.

IV. MAYOR’S REPORT AND PRESENTATIONS – None.

V. COUNCIL ACTION

1. Consent Agenda

a. City Council Minutes –5/04/2020

Motion was made by Councilman Farley and seconded by Councilman Koehler to approve the minutes of 5/04/2020 as presented. Roll call vote: AYES: Councilman Farley, Councilman Morton, Councilman Hockett, Councilman Koehler, Mayor Morgan. NAYS: None. Motion carried.

2. Update from Marion County Health Dept on COVID-19 pandemic.

City Manager Barbee asked that this agenda item be postponed until later in the meeting, as MCHD director Melissa Mallow has not joined the meeting. Council agreed by consensus.

3. Resident Request for City to “re-open” against Governor’s Executive Order

Brock Waggoner submitted the following letter on May 13th:

42 U.S. Code § 1983.Civil action for deprivation of rights

- [U.S. Code](#)
- [Notes](#)

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Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R.S. § 1979; [Pub. L. 96-170, § 1](#), Dec. 29, 1979, [93 Stat. 1284](#); [Pub. L. 104-317, title III, § 309\(c\)](#), Oct. 19, 1996, [110 Stat. 3853](#).)

<https://www.law.cornell.edu/uscode/text/42/1983>

I would like to again address the city council and further my comments in my first letter around liability that can be placed on the city, and to yourselves personally. This liability becomes an issue by continuing to support enforcement of the governor’s unlawful order. In my first letter I talked about the decision for Rep. Bailey and how this can be used in other legal proceedings when suing for businesses to be open in the future. With the governor’s appeal denied by the Illinois Supreme Court, the governor is playing with fire with his continued orders. Though there are severe judicial issues to consider, what is the most egregious is the continued limiting of all of Salem residents’ civil liberties. With the enforcement for how churches are forced to worship, businesses being closed, etc. The continued denial of constitutionally guaranteed civil liberties, the City Council opens itself to severe legal blowback. I cannot say what this blowback would be, but as a concerned citizen I am bring to the council’s attention that there is potential fallout from enforcing an unlawful order.

Part of my purpose in writing is to remind the city that we will continue to lose tax revenue and jobs to cities like Mt. Vernon, that is now open. Also cities in states like Missouri and Indiana as they continue to open for business. Many fear and make the argument that opening will increase transmission of the virus. Instead of relying on models that have continued to be wrong again and again,

Section bracketed on this page and the next two pages was added at the request of Brock Waggoner and approved by City Council on July 6, 2020. bq

we can take a case study from Georgia. During the two weeks since opening they had a drop in hospitalizations, not an increase. Even if we see an increase this would not be unexpected as we are testing more than ever and is predicted by the Illinois Dept. of Health. When they developed the Pandemic Influenza Preparedness and Response Plan Version 5.00 May 2014, they understood that a disease like this would be impossible to contain.

I would invite you to read the full plan. Below are excerpts from the states known understanding how quarantine for novel viruses works.

"Quarantine (a period of isolation to prevent disease spread) is not effective in controlling multiple influenza outbreaks in large, immunologically naïve populations, because the disease spreads too rapidly to identify and to control chains of transmission. Even if quarantine were somewhat effective in controlling influenza in large populations, it would not be feasible to implement and enforce with available resources, and would damage the economy by reducing the workforce. Most people will voluntarily quarantine themselves in their home."

When planning without the all the politics it was understood that during a future disease outbreak quarantine would not be effective. It was understood that it would have spread beyond the ability of health officials to contain.

Also contained in the plan is specific guidance of how quarantines are to be enacted locally.

"IDPH has supreme authority in matters of quarantine, and may declare and enforce quarantine when none exists, and may modify or relax quarantine when it has been established (**20 ILCS 2305/2**). IDPH can issue immediate orders, without prior consent or court order, for isolation, quarantine and closure of facilities when necessary to protect the public from a dangerously contagious or infectious disease. Within 48 hours, IDPH must gain consent of the person or owner of the place or request a court order."

By continuing enforcement of the governors order the County Health Dept. is going against their own guidance and lawfulness in managing this virus. They have power for 48 hours and then need a court order to continue a quarantine if the individual or business is not willing to comply.

Also included are relevant sections of state law for your review on this matter. I have not seen reported where the health department is declaring business and persons quarantined and getting court orders after the 48 hours is over.

20 ILCS 2305/2(b) – Subject to the provisions of subsection (c), the Department may order a person or group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public to prevent the probable spread of a dangerously contagious or infectious disease, including non-compliant tuberculosis patients, until such time as the condition can be corrected or the danger to the public health **eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists.**

20 ILCS 2305/2(c) Except as provided in this Section, no person or a group of persons may be ordered to be quarantined or isolated and no place may be ordered to be closed and made off-limits to the public except with the consent of the person or owner of the place or upon the prior order of a court of competent jurisdiction.

20 ILCS 2305/2(c) The Department may, however, order a person or a group of persons to be quarantined or isolated or may order a place to be closed and made off limits to the public on an immediate basis without prior consent or court order if, in the reasonable judgment of the Department, immediate action is required to protect the public from a dangerously contagious or infectious disease. In the event of an immediate order issued without prior consent or court order, the Department shall, as soon as practical, within 48 hours after issuing the order, **obtain the consent of the person or owner or file a petition requesting a court order authorizing the isolation or quarantine or closure. When exigent circumstances exist that cause the court system to be unavailable or that make it impossible to obtain consent or file a petition within 48 hours after issuance of an immediate order, the Department must obtain consent or file a petition requesting a court order as soon as reasonably possible.**

20 ILCS 2305/2(c) -To obtain a court order, the Department, by clear and convincing evidence, must prove that the public's health and welfare are significantly endangered by a person or group of persons that has, that is suspected of having, that has been exposed to, or that is reasonably believed to have been exposed to a dangerously contagious or infectious disease including non-compliant tuberculosis patients or by a place where there is a significant amount of activity likely to spread a dangerously contagious or infectious disease. The Department must also prove that all other reasonable means of correcting the problem have been exhausted and no less restrictive alternative exists.

Has the City Council worked with the health dept. to identify the local response and understand where legal authority ends, and unconstitutional tyranny begins? By voting to declare Salem open for business you will be stating that you are standing on the side of the constitution. I challenge you to be bold in listening to a single voice petitioning for relief. I know you have it in you as a single citizen has complained enough to have your look to enact an animal feeding ordinance that is already covered under state law. Instead of choosing to help settle a neighbor dispute, choose to help all citizens in the city.

Brock Waggoner

13 May 2020

Mayor Morgan indicated she had received Brock Waggoner's original email regarding his desire that Salem "re-open" against the Governor's orders prior to the last meeting, but his email did not request that this be made an agenda item. Mayor Morgan added that since that meeting Mr. Waggoner has bad mouthed her all over Facebook, and she feels he owes her an apology. Mr. Waggoner responded that he will not apologize, and as it was a petition for relief and for the Council to declare Salem "Open for "Business", it should have been made an agenda item.

Mayor Morgan indicated City Council does not have the authority to declare Salem open, and must follow the Governor's mandates. Mr. Waggoner declared the City's support of Governor Pritzker's executive orders as unconstitutional. Councilman Koehler asked Mr. Waggoner if he is a lawyer. Mr. Waggoner responded that he is not, but that the City and City Council members are opening themselves up to be personally liable for legal action by supporting an unconstitutional act.

Councilman Morton asked what the City Attorney advises. City Attorney Mike Jones responded that Mr. Waggoner's quarrel is with the Governor's office, and it appears he has three choices:

- 1) Obey the Orders;
- 2) Ignore the Orders; or
- 3) Take the Governor to court.

Mr. Waggoner asked Chief Reynolds if he is training his officers to do something unconstitutional. Chief Reynolds responded that his department has not ticketed or arrested anyone over this issue. Mr. Waggoner indicated the City Council can direct the Police Department not to enforce this order. Chief Reynolds responded that the City Council cannot tell the Police Department what laws they can or cannot enforce.

City Manager Barbee indicated that if Mr. Waggoner feels this action is unconstitutional, City Attorney Jones has advised him of the actions he can take.

Councilman Farley indicated the Governor's Orders have not been found unconstitutional in the Appellate Court, and there is legal action pending. The decision made in Representative Bailey's case has since been withdrawn, and it was made for one individual, not the entire State. Mr. Waggoner said "it applies to all of us". Councilman Farley responded "that is not what the lawsuit said". Mr. Waggoner reiterated that the Governor's action is unconstitutional, and that Council members swore to uphold the constitution.

Mayor Morgan asked for a motion to "Open Salem". There was no motion made. The motion failed, due to lack of a motion.

(cont.)

Mayor Morgan read the following comments into the record:

My heart goes out to citizens of Salem. I've suffered just like you. As a lifelong resident of Salem, I am on your side. I need my hair fixed. I'd like to go to restaurants. I'm tired of cooking. But as Mayor, I have other obligations. I must uphold the law. I took an oath. I have contacted Mayors of surrounding cities; called the Governor many times; called Senators, Representatives and our City Attorney. All say I have no authority to open or close our City. No matter how much it is believed that our governor has no authority, he does -- he has the ability to punish those who open and punish our municipality if we go against his mandates.

The legislature has the ability to change this. The legislature meets on Wednesday, May 20th. All Illinois residents should contact the Governor's office, as well as their Representatives' and Senators' offices. Let your State representatives know your feelings regarding the Governor's statewide mandates, and how they affect Southern Illinois. Those State legislators **CAN** open Salem.

Please know that this is a very hard thing for Salem, its businesses and its citizens, to go through -- but we will make it.

4. Second Reading – Ordinance against the feeding of wildlife within the City limits

Motion was made by Councilman Koehler and seconded by Councilman Farley to approve Ordinance 2020-05 prohibiting the feeding of wildlife inside Salem city limits. Roll call vote: AYES: Councilman Hockett, Councilman Farley, Councilman Koehler, Mayor Morgan. NAYS: None. Councilman Morton abstained. Motion carried.

5. Extension of contract for services for landfill with AECOM

Public Works Director John Pruden indicated that the document from AECOM is really a contract extension for the required groundwater compliance reporting, although they call it a "change order". Mr. Pruden indicated this is a budgeted item, and he recommends approval, as AECOM does a good job for the City. Councilman Morton asked how many years we will have to do this testing. Mr. Pruden responded that it is a minimum of 30 years past the closure date, which was in 2011. Mr. Pruden added that he is working with AECOM and the State to reduce the amount of testing that must be done. ***Motion was made by Councilman Farley and seconded by Councilman Hockett to approve extension of the contract with AECOM, as presented. Roll call vote: AYES: Councilman Hockett, Councilman Koehler, Councilman Farley, Councilman Morton, Mayor Morgan. NAYS: None. Motion carried.***

6. Approval of Pay-out #4 for JK Trotter on Sanitary Sewer Project

Public Works Director John Pruden indicated the JK Trotter pay request is for the trunk line and Illinois Street sanitary sewer project. The City is holding on to \$17,000 in retainage. Pruden added that they did a nice job, and he is recommending approval. Pruden added that the next step will be an engineering analysis of the north section of the system. Councilman Farley responded that he is really glad the City is doing this project, as it needed to be done. ***Motion was made by Councilman Farley and seconded by Councilman Koehler to approve Payout #4 to JK Trotter and Sons in the amount of \$78,367.51. Roll call vote: AYES: Councilman Koehler, Councilman Morton, Councilman Hockett, Councilman Farley, Mayor Morgan. NAYS: None. Motion carried.***

7. Recommendation from Planning Commission for Special Use Permit

City Manager Barbee indicated the Planning Commission held a public hearing on a Special Use Request for a Home Occupation Permit from Andrea McGaughy, 647 N. Shelby. Ms. McGaughy makes facemasks, memory blanks, car seat ponchos, curtains, etc. and has generally sold them over the internet. Ms. McGaughy would like to allow local buyers to come to her home to make purchases. ***Motion was made by Councilman Koehler and seconded by Councilman Farley to approve issuance of a Special Use – Home Occupation permit to Andrea McGaughy at 647 N. Shelby. Roll call vote: AYES: Councilman Koehler, Councilman Farley, Councilman Morton, Councilman Hockett, Mayor Morgan. NAYS: None. Motion carried.***

8. Approval of accounts payable for period of April 20, to May 15

Following review and discussion, motion was made by Councilman Farley and seconded by Councilman Hockett to approve the Accounts Payable as presented. Roll call vote: AYES: Councilman Farley, Councilman Morton, Councilman Hockett, Councilman Koehler, Mayor Morgan. NAYS: None. Motion carried.

2. Update from Marion County Health Dept. on COVID 19 Pandemic

City Manager Barbee indicated MCHD Director Melissa Mallow had not been able to sign on to the Zoom meeting, but had provided a copy of the presentation to the County, which follows:

Good Evening, I am Melissa Mallow, the administrator for the Marion County Health Department. I would like to give you a COVID-19 update.

At this time, there have been 802 tests done in Marion County. The testing is done through St. Mary's Hospital Express Clinic and the Salem Hospital. The health department does not administer the tests. There have been 754 negative test results and 48 positive. Of the 48 positive cases, 29 have met the criteria to be released from isolation and are considered to be recovered. There are 16 positive cases that are currently at home on isolation, 3 positives cases that are hospitalized (2 of them are on vents) and 103 close contacts. So, that means my staff calling 119 people twice a day (Monday – Friday) to check on them for fever and signs/symptoms. Of our 48 positive cases: 2 are considered to be travel related, 31 are linked to the various facility outbreaks in our area and 15 are considered to be community spread transmission.

The health department has given out PPE to the hospitals, nursing homes, assisted living facilities and group homes in Marion County. We have given 200 N95 masks to Salem Hospital and 400 N95 masks to St. Mary's Hospital. We have given out 1200 gloves, 590 N95 masks, 1400 surgical masks and 131 bottles of hand sanitizer to Marion County long term care facilities, skilled care facilities, assisted living facilities and group homes. On March 23, I started hosting COVID-19 daily conference calls with the local hospitals, police chiefs, fire chiefs, EMS, EMA, Red Cross, city managers, Murray Center, nursing homes and assisted living facilities.

Besides dealing with COVID-19, the health department is still providing services to the public, such as shot clinics, WIC and labs. I would like to commend my staff for taking on the added duties and thank them for everything that they are doing to protect the health of the Marion County residents.

The health department has received many calls from citizens and business owners regarding the Governor's Executive Orders and COVID-19. I understand their concerns and that the Governor's Executive Orders have resulted in great burdens and hardship on the residents of Marion County, especially financially.

However, it would be irresponsible and reckless for the health department to advise the public to ignore the Governor's Executive Orders. It is important for all Marion County citizens and business owners to remember that the State of Illinois is in charge of many licenses and their ability to do business in the State of Illinois. If someone violates the Governor's Executive Orders, the State, not the County, has the ability to act on professional certifications and licenses that they hold.

Kevin Martin, executive director of the Illinois Insurance Association has said that insurance policies are "not going to cover intentional acts." In other words, if a business intentionally reopens in violation of the Governor's Executive Orders and somebody injures themselves there or contracts the virus, insurance coverage isn't a given. The same may go for municipalities which openly violate the Governor's Executive Orders.

The Illinois Department of Insurance adds that "if businesses reopen contrary to public health guidelines and the state's executive orders, there is risk that an insurer could find reason within the policy language to deny COVID-19 related claims."

The Marion County Health Department is a certified health department. We receive that certification from the Illinois Department of Public Health. Dr. Ezike, Director of the Illinois Department of Public Health, has stated over and over again to the local health departments that we must follow the Governor's Executive Orders to protect the health of the public. 56% of the Marion County Health Department's revenue comes from grants issued by the State of Illinois. I am not putting the health department's certification in jeopardy, so we are enforcing the Governor's Executive Orders.

Thank you.

VI. CITY MANAGER REPORT

City Manager thanked the Public Works Department for putting up the US Flags for Memorial Day, and reminded attendees that City Hall would be closed on May 25th in recognition of Memorial Day.

City Manager Barbee indicated Salem Community High School administration is in the process of putting together the largest type of graduation program that they can have, and still comply with the Governor's Executive Order. The program will be held on Sunday, May 24th. At 8:20 pm, the graduate's names will be read out, as "2020" is 8:20 pm in military time. The drive by parade will be held at 4:00 pm and will begin in Bryan Park, will head west on Boone St. to Hawthorne Road, to Spillway Rd., and end up back in Bryan Park. There will be a fireworks display around 9:00 pm by J & M Displays, all on SCHS property, and they will be consumer class fireworks, rather than commercial grade.

VII. CITY ATTORNEY REPORT – None.

VIII. FINANCE DIRECTOR REPORT – None.

IX. CITY COUNCIL REPORT

Councilman Koehler indicated the contractors are doing a great job on Whittaker Street. Public Works Director Pruden added that they will start on water line replacement this week, and will soon finish the sewer.

X. EXECUTIVE SESSION

1. 5 ILCS 120/2(c)(1) - Personnel

Motion was made by Councilman Farley and seconded by Councilman Koehler at 6:50 pm to enter into Executive Session for the purpose of discussing Personnel. Roll call vote: AYES: Councilman Koehler, Councilman Farley, Councilman Morton, Councilman Hockett, Mayor Morgan. NAYS: None. Motion carried.

(Councilman Farley moved the Mayor, Council, City Manager, City Clerk, Finance Director and Chief of Police into a breakout session.)

Return to open session at 6:52 pm.

XI. City Council Action following Executive Session

1. Personnel

Motion was made by Councilman Farley and seconded by Councilman Hockett to direct the Police Board to begin the hiring process for a new police officer. Roll call vote: AYES: Councilman Koehler, Councilman Hockett, Mayor Morgan. NAYS: Councilman Morton, Councilman Farley. Motion carried.

XII. ADJOURNMENT

As there was no further business to discuss, ***motion was made by Councilman Farley and seconded by Councilman Morton to adjourn the meeting at 7:03 pm. Roll call vote: AYES: Councilman Hockett, Councilman Koehler, Councilman Farley, Councilman Morton, Mayor Morgan. NAYS: None. Motion carried.***

Bev Quinn, CMC
City Clerk

Approved: _____