

APRIL 7, 2020

SPECIAL CALLED MEETING OF THE BOARD OF CITY COMMISSIONERS OF THE
CITY OF ALBANY, GEORGIA
GOVT CENTER – ROOM 100

PRESENT Mayor Bo Dorough
Mayor Pro Tem Jon Howard
City Commissioners: Matt Fuller, Chad Warbington, Bob Langstaff, Jr., and
Demetrius Young
City Manager: Sharon D. Subadan
City Attorney: Nathan Davis

Mayor Dorough called the meeting to order at 3:05 p.m.

The Clerk read the call as follows:

Mayor and Board of City Commissioners
P.O. Box 447
Albany, Georgia

There will be a Special Called City Commission meeting on Tuesday, April 7, 2020 at 3:00 p.m. This will be a virtual, live-streamed meeting that will air on Channel 16. The purpose of the meeting is for the Mayor and Board of Commissioners to adopt the following ordinance:

1. Enforcing compliance with Governor Brian Kemp's Executive Order of April 2, 2020; Authorizing the City of Albany Police Department to enforce Governor Kemp's Executive Order

Sincerely,

/s/ Sharon Subadan
City Manager

/s/ Bo Dorough
Bo Dorough
MAYOR

Email confirmation received
Notified via phone call
JON HOWARD, WARD I
MAYOR PRO TEM

Notified via phone cell
MATT FULLER, WARD II
CITY COMMISSIONER

Notified via phone cell
BJ FLETCHER, WARD III
CITY COMMISSIONER

Email confirmation received
Notified via phone cell
CHAD WARBINGTON, WARD IV
CITY COMMISSIONER

Email confirmation received
Notified via phone cell
BOB LANGSTAFF, JR., WARD V
CITY COMMISSIONER

Notified via phone cell
DEMETRIUS YOUNG, WARD VI
CITY COMMISSIONER

Mr. Davis explained that the purpose of the ordinance is to track the Governor's most recent (April 2, 2020) Executive Order; State law is clear that the governor controls these type situations by specifically providing that nothing can be enacted that is stricter than the Governor's Order. This ordinance parallels the Governors' Executive Order and authorizes Albany Police Dept., (APD) to enforce the law, etc. He cited the State law, which declares that 'law enforcement authorities of the State and political subdivisions shall enforce the rules and regulations under the Emergency Management Act', adding that political subdivisions cannot do anything that is inconsistent with any order, rule, or regulation promulgated by the Governor or any State agency. The intent is to follow exactly what the Governor has provided for.

Mayor Dorough commented on updates with GMA, through their General Counsel Rusi Patel,

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expressing the opinion that cities should enact an ordinance adopting the Executive Order, adding that it is not a State law; therefore, the City needs to adopt this.

Commissioner Langstaff asked what other cities took taken this action, Mayor Dorough explained that some cities have adopted an ordinance and mentioned Savannah, which guarantees they are complying, and that law enforcement can enforce the Order. Commissioner Langstaff addressed the issue of local law enforcement not having the ability to close local businesses, etc., and stated that he does not think what is drafted is legal and/or necessary, since the Executive Order states that local authorities can do everything to enforce it, except close down businesses. He mentioned that if the Governor does a 3rd amendment after the City's ordinance is adopted the City will have something different from the Governor. He suggested adopting it by reference and incorporating all future amendments to it, explaining that it cannot be done through reciting what the Governor has enacted.

Commissioner Warbington stated that he agreed somewhat with Commissioner Langstaff's comments and suggested mirroring what was done in Savannah, which is a general document. Mayor Dorough referenced a call he had with Mr. Patel, GMA's general counsel, who suggested that in order for municipalities to have enforcement ability, an Ordinance needed to be in place.

Discussion followed on the pros/cons of adopting the ordinance as presented, pertaining to local officers being authorized to enforce the Executive Order from the Governor. Mayor Dorough stated that the point is for cities to have an Ordinance incorporating this order or a broader ordinance saying anytime the Governor Executes an Executive Order, our police officers/staff will have the authority to enforce the order(s); this is not a statute and not codified. Commissioner Langstaff noted that the last Executive Order amendment references local law agencies, which are authorized to enforce anything that the Governor enacts under those statutes. Mayor Dorough countered that it states, 'under the laws of the state'. He stated that Commissioner Langstaff has every right to vote against it, he is merely sharing what GMA suggested. Commissioner Langstaff asked why not adopt a general ordinance that could be amended as needed whenever the Governor changes the Executive Order; he has already amended it twice and could amend it five more times. Mayor Dorough explained that the ordinance provides assurance that APD, Code Enforcement and other departments with enforcement authority are authorized to enforce the Executive Order.

Commissioner Warbington agreed with Commissioner Langstaff that this is somewhat redundant, however, he said he supports it if the Mayor and Police Chief agree it is needed. He asked that we work on a general ordinance to avoid these type meetings since the Governor's Order most likely may be extended.

Mayor Pro Tem Howard said he is in favor of moving forward per Mayor Dorough's recommendation.

APD Chief Michael Persley stated that he received guidance from the Georgia Association of Chiefs of Police and read from that statement that 'if the governing authority of a municipality or county government seeks to provide their police department with the authority to mandate the closure of a facility/business there must be a City Ordinance mirroring the Governor's Order'. He added that they can enforce it but have no authority to close a business; as of now only state law enforcement or the Sheriff can close businesses.

Commissioner Young agreed with Commissioner Langstaff's comments, adding that he feels the proposed ordinance makes the Order redundant. He stated that if APD can enforce the ordinance, why adopt a local ordinance, suggesting that the Governor does not want to give the power to close businesses, which may put the business community at risk of being shut down, with some being deemed 'non-essential' versus those that are essential.

Mayor Dorough asked Ms. Subadan, who was also on the call with GMA's Counsel, to give comments on what was explained. Ms. Subadan related that Rusi Patel clarified that the original Order declared that only state agencies can enforce, which is the sticking point. At that time, it did not reference the Sheriff; however, Mr. Patel explained that State law allows local law enforcement to enforce executive emergency orders. Their recommendation at that time was to pass something locally in order to ensure that APD can enforce. She explained that a revision to the order came out with Chief Persley also getting recommendations from the Association of Chiefs. In reply to Ms.

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Subadan, Chief Persley agreed that the recommendation was to pass a local ordinance in order to give permission regarding closing businesses.

Commissioner Langstaff stated that he feels that local law enforcement has never been given the ability to close businesses; the Governor carved that out for State enforcement only by deputizing sheriffs with that authority. He suggested that the change adds more restrictive provisions to the Order by the City, which the Governor specifically said is not allowed. He added that he feels the City is treading on dangerous liability grounds by providing the ability to close businesses by local law enforcement. All that is needed is issuing citations if it [businesses] needs to be closed and call the Sheriff's Office to execute the closure.

Mayor Dorough countered that he is not talking about closing business, but rather the question pertains to the authority to issue citations. The APD Chief has not issued citations since Friday due to questions on whether they have the authority to do so. He said he is trying to get an ordinance passed that codifies APD's ability to act pursuant to the Governor's Order. Basically, Mr. Patel recommended that a prudent course would be for cities to have an ordinance authoring law enforcement and any other employees (with enforcement powers) to enforce the Executive Order, which is completely separate/different than a statute in the Official Code of Georgia.

Additional discussion followed on both Orders, enforcement, etc.

Mr. Davis noted page six of the ordinance, last line of sec. 18, adding that the ordinance does not provide for closing business, but rather issuing citations or arrest powers after notice.

Hearing no further comments, Mayor Dorough introduced

AN ORDINANCE NO. 20-103

Enforcing Compliance with Governor Brian Kemp's Executive Order; Authorizing the City of Albany Police Department to Enforce Governor Kemp's Executive Order

Mayor Dorough then offered the ordinance and asked for unanimous consent to dispense with the second reading and asked for its adoption, seconded by Mayor Pro Tem Howard. Following a roll call vote, the motion carried 5-1, with Commissioner Langstaff voting no.

Mayor Dorough clarified that the APD Chief does not have any authority to close businesses and if an issue arises, the Sheriff's office will be contacted.

Commissioner Warbington asked if there will be a general ordinance, something similar to Savannah's, which will encompass future Governor Executive Orders. Mr. Davis stated that he will prepare something and send it to the Mayor and Commissioners for review.

There being no further discussion, the meeting adjourned at 3:35 p.m.

MAYOR

ATTEST

CITY CLERK