

**IN THE CIRCUIT COURT OF THE 19<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR INDIAN COUNTY, FLORIDA**

**CASE NO.:** 312020CA000275XXXXXX

**ASSIGNED DIVISION:** CIVIL

**DAMIEN H. GILLIAMS,**

Plaintiff,

vs.

**ED DODD and PAUL CARLISLE,**

Defendants.

**ORDER ON PLAINTIFF'S AMENDED  
MOTION FOR TEMPORARY INJUNCTION**

THIS CAUSE having come before the Court on the 8<sup>th</sup> day of May 2020 at 10:00 am, upon the Plaintiff's Amended Motion for Temporary Injunction ("the Motion"), with a court reporter present for these evidentiary proceedings, and the Court having reviewed the court file including the pleadings, considered the Motion and any amendments to the motion, the supporting Affidavit of the movant, the written objections of the Defendants, and having heard testimony of sworn witnesses, reviewed the exhibits, received the submissions and arguments of counsel, and being otherwise fully advised in the premises, this Court makes the following findings of fact and conclusions of law:

1. The Code of City of Sebastian is plain and unambiguous and it is unaltered by the current affairs. It does allow the mayor to declare a state of emergency in times of public emergency. Therefore, the Mayor's act in this regard does follow the law.

2. The Code of City of Sebastian allows the City Council to terminate the state of emergency at any time. A meeting has not been had to properly review this issue.
3. The City Manager is responsible for “emergency management” function. He reports to both the Mayor and the City Council and, again, that requirement remains unaltered.
4. I note that the Code of the City of Sebastian founders chose to use the word "shall" many times in the Code including paragraph 2(a) and 2(c) with regard to the City management communication with the City Council.
5. The Code requires any orders issued by a City Manager using the term mandatory which is shall, and again I am citing to the Code itself, at the earliest practical time to be presented to the City Council for ratification, confirmation, amendment, or termination.
6. A meeting has not been had for the City Council to review this issue. The Code uses the terms earliest practical time and also contemplates an impossibility if a meeting cannot be held at the City Hall and specifically allows a meeting anywhere in the City.
7. While the code drafters seemed to have contemplated a building structural issue because they used the word repaired, it is clear that their intent was to keep the City Council meetings going and for the leaders of the community to find a way to work around any impossibility.
8. This Court looks to the terms of the binding law which here is the Sebastian Code. The drafters of the Code specifically chose clear terms such as earliest practical time. They also used reasonable attempts. And they used terms mandatory, I might add, shall meet regularly.
9. The Code specifically allows any City Council Member to call a special meeting even in a public emergency with certain public notice requirements. If a City Council Member properly called a special meeting and if that was denied, it would be a violation of the section Article II Section 2-12A.

10. In further applying the law to the facts, this Court finds there is no allegation, there is no well-founded allegation by any party that there was an impossibility for the City Council to meet at City Hall as contemplated by the City Code.
11. My order is going to address three main categories. Number one will be the place. Number two will be the time. And number three will be the subject matter. Addressing the place, therefore, in applying the City Codes notice requirements, City Council shall meet at City Hall applying all public health COVID-19 requirements including proper distancing of people and use of electronic communications such as we are using now in the entire judicial system which is Zoom.
12. The second category I am addressing is time. Applying the City Code's earliest practical time to meet, time is certainly ripe. Many institutional offices around the U.S. are up and running, including the judiciary and the clerk's offices. There is no reason that has been provided, no reasonable reason which can be provided why Sebastian cannot likewise find creative ways to meet as is required by its Code.
13. The third category is subject matter. The subject matter of the public meeting shall include but is not limited to the following: Number one, whether or not the City Council chooses to keep or terminate the state of emergency as is required for its reflection.
14. Number two, the Code requires that any orders issued by the City Manager be submitted to the City Council for review. If that has occurred, the meeting must include the City Council's review of any orders issued by the City Manager as is required by the City's Code.
15. Number three, whether and if a City Council Member, i.e., Mr. Gilliams properly called a special meeting, and if it was properly denied whether it was a violation of Article II Section 2.12(a). The City Council gets to review this issue. It is more properly factually vetted out by the City Council, not by the judiciary.

16. I have already ruled that if there was a proper special meeting that was called and if it was improperly denied, it would be a violation of this section. However, there is a fact pattern that has to be laid by the City Council on those facts before it even comes to the judiciary. So, in that regard this issue has to go to the City Council for its review.

17. Number four, in compliance with the Sebastian City Charter Article II Section 2.13, whether the City Council chooses to adopt an emergency ordinance as contemplated by that section in its notice requirement -- that section is very specific. And my expectation is the City Council will be able to have the opportunity to review that specific section.


18. Those are the four subject matter categories that shall be included with this upcoming meeting, but the meeting is not limited to those issues. To that extent the emergency injunction is granted.

**WHEREFORE, IT IS ORDERED AND ADJUDGED** that the motion for temporary injunction is Granted. The Court does hereby enter this temporary injunction and shall continue during the pendency of the action unless this injunction is dissolved prior to the completion of the final merits trial on the pleadings before the Court and enjoins the Defendants to conduct the following actions:

- A. The City Manager is directed to ensure that City Council shall meet at City Hall applying all public health COVID-19 requirements including proper distancing of people and the use of electronic communications access for the public.
- B. The City Manager is directed to set a time for City Council to meet and the practical time for the City Council to meet is ripe.
- C. The Meeting of the City Council shall include the following subject matters to be placed on the Agenda:
  1. Whether or not the City Council chooses to keep or terminate the state of emergency issued by the Mayor.

2. Any orders issued by the City Manager from the date of the issuance of the declaration of the local state of emergency, and until , shall be submitted to the City Council for review action by the City Council in accordance with Section 2-37(2)c of the Municipal Code.
  3. The City Council shall determine facts necessary as to whether there was a proper special meeting request by Mr. Gilliams and whether it was improperly denied as a proper request for a special meeting and an improper denial would constitute a violation of Article II, Section 2.12 of the Charter.
  4. The City Council may enact any emergency ordinance(s) under the provisions of Article II, Section 2.13 of the Charter.
  5. Any other issue requested by any member of the City Council or Charter Officer may be also placed on the Agenda as this Order shall not limit the items to be addressed by the City Council.
- D. There is no bond required for this temporary injunction as the Plaintiff is a public official and the subject matter of this Order is in the public interest.
- E. Application for Costs entitlement and amounts are reserved pursuant to Section 86.081, Fla. Stats.
- F. This Order becomes immediately effective on the date it is filed by the Clerk of Court, and this court reserves jurisdiction over the parties to enforce any noncompliance with this temporary injunction.

DONE AND ORDERED in Chambers at the Indian River County Courthouse, Vero Beach, Indian River County, Florida, this \_\_\_ 12 day of May 2020.

  
HON. JANET CARNEY CROOM  
Judge of the Circuit Court

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