

**MINUTES
OF THE
SPECIAL MEETING
OF
LAKEWOOD CITY COUNCIL
HELD ONLINE
MAY 21, 2020
6:00 P.M.**

Special Meeting of the Lakewood City Council called to order at 6:07 PM by President O'Malley.

Present: Thomas R. Bullock III, Sarah Kepple, John Litten, Tess Neff, Daniel O'Malley, Tristan Rader, Jason Shachner

Also Present: Mayor George, Law Director Corrigan, Acting Planning and Development Director Milius, Police Chief Malley, Fire Chief Dunphy, Public Works Director Ducu, Human Resources Director Dillinger, Building Commissioner Joe Meyers, Assistant Law Director Swallow, City Engineer Papke, Urban Designer Allison Hennie, members of the Planning Commission, Deputy Clerk Lascu, Clerk Bach taking minutes, Patty Ryan, Executive Director of the Lakewood Chamber of Commerce, and members of the public.

SUBSTITUTE RESOLUTION 2020-31 - A RESOLUTION to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the Planning Commission to grant temporary conditional use permits for outdoor/seasonal dining facilities during this state of emergency to qualifying applicants. (*Referred to HPD 5/18/20; amended and referred back to Council and Planning Commission 5/19/20*)

At the request of President O'Malley, Councilmember Shachner reported on the May 19th Housing, Planning, & Development Committee meeting in which Sub. Resolution 2020-31 was discussed. He summarized the changes adopted by the Committee that evening which included a lowering of the liability insurance requirements for businesses that do not serve alcohol in Section 8 and explicitly allowing parklets in Section 5. The Committee discussed questions and concerns about safety. Councilmember Shachner stated that the resolution empowers the Planning Commission to make decisions and that they will do so in consultation with safety forces.

At the request of President O'Malley, Councilmember Shachner went on to summarize the deliberations of the Planning Commission which met in a special meeting immediately prior to tonight's Special Meeting of Council. He reported that the Planning Commission was generally supportive of the resolution. Some members expressed concern about including parklets in the

resolution without written guidelines on parklets in place. The Commission recommended to waive the conditional use permit fee entirely and added a section about administrative review.

Assistant Director Swallow provided more details on the recommendations from Planning Commission as follows:

- The Commission voted 2-3 to keep reference to parklets in the resolution and asked for additional guidance on parklets.
- The Commission discussed the end time of outdoor dining and concluded that 10:00 p.m. was appropriate.
- The Commission provided a method for submissions to be reviewed administratively in lieu of ABR to save time and ensure that applicants do not have to go through two public meetings. Administrative review will include review by Building, Public Safety and the City Engineer.

Assistant Director Swallow shared her view on the inclusion of parklets in the legislation. She stated that the original language could also accommodate parklets. She expressed concern that installation of parklets on state and county roads could jeopardize funding. Because the City has not set guidelines for parklets, the Planning Commission will have to decide on a case by case basis. Making decisions this way could set the City up for legal scrutiny. She suggested that Council enact the legislation without the language on parklets, while taking the time to establish a set of standards and procedures for parklets.

President O'Malley expressed agreement with Assistant Law Director Swallow. He stated that while he appreciates the idea of parklets that issues of legality, safety, and neighborhood tranquility must be examined before Council gives parklets a full-throated endorsement. He expressed confidence that Council will be able to overcome concerns quickly but that he is not comfortable moving forward without any regulations.

Motion by Councilmember Shachner and seconded to substitute Sub. Reso. 2020-31 with the amended version recommended by Housing, Planning, & Development Committee on May 19, 2020.

He remarked that the intent of motion was to make sure everyone was working off the most updated version.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, O'Malley, Neff, Shachner, Rader
Nays: none

Motion passed. Substitute Resolution 2020-31 substituted.

Motion by Councilmember Shachner and seconded by President O'Malley to change the date in Section 1 from October 1, 2020 to October 31, 2020.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, O'Malley, Neff, Shachner, Rader

Nays: none

Motion passed.

Motion by Councilmember Shachner and seconded by President O'Malley to change Section 3 as follows: "...shall be ~~reduced to \$50~~ waived."

Discussion: Acting Director Milius expressed agreement with waiving the fee. She stated that it would benefit businesses and be administratively easier to manage instead of a reduced fee.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, O'Malley, Neff, Shachner, Rader

Nays: none

Motion passed.

Motion by Councilmember Shachner, seconded by Councilmember Bullock to amend Section 5 as follows:

"if the proposal is a temporary or a permanent structure, Planning Commission shall obtain an opinion from the appropriate safety forces, the building dept and/or the city engineer. Such an opinion shall be completed within 7 days. If not, then the Planning Commission can not delay an application any further. Planning Commission shall not reject an application based on the failure of the timely completion of an opinion."

Discussion: Councilmember Bullock remarked that the language addresses concerns about safety and offers assurance that safety forces will be involved in approving these.

Through discussion it was clarified that this amendment is meant to address the suggestions of the Planning Commission to include an administrative review of applications. Ms. Swallow helped clarify the definition of a temporary structure under the Code. A tent would be a temporary structure. A café table and chairs would not be.

Councilmember Shachner explained his rationale for the amendment, stating that he did not want there to be any invalid reasons to deny an application. He further remarked that the resolution would not have any teeth without putting in this protection to applicants.

Chief Dunphy, Commissioner Meyers, Assistant Law Director Swallow and Acting Director Milius provided assurances that the administration would not under any circumstances intentionally fail to review applications. They assured Council that the administration is motivated to move quickly and will do so.

In response to concerns raised by Commissioner Meyers, the motion was amended by Councilmember Shachner as follows:

“if the proposal is a temporary or a permanent structure, Planning Commission shall obtain an opinion from the appropriate safety forces, the building dept and/or the city engineer. Such review shall be completed within 7 days. Failure to timely to timely complete such a review shall not permit Planning Commission to reject such application.”

Ms. Swallow assured Commissioner Meyers that the Planning Commission would not be forced to approve submissions where the administration has concerns. She mentioned that the Commission could approve submissions conditioned upon favorable review by the administration and/or defer decisions in order to seek the review of the administration.

Councilmember Bullock emphasized the need for speed and a menu of options in order to not lose businesses. He applauded the usual mode of careful, slow, and deliberate approvals but that we must prevent against any additional sources of delay in this situation.

President O’Malley expressed confidence that the administration will not drag their feet on application and remarked that he sees no need to put a finer point on it.

Ms. Swallow clarified that she is not anticipating any undue delays, however, the Planning Commission may need more than 7 days to review something or get further information. She noted that the Planning Commission is agreeable to meet as much as necessary and understands the urgency. Acting Director Milius echoed these comments.

President O’Malley stated that he does not want to force the Planning Commission to approve something if the administration needs more time.

Ms. Swallow again assured Council that neither the Planning Commission nor the administration intends to hold up any submissions. She stated that 7 days simply may not be enough time to evaluate a proposal, particularly if it is for a parklet, which is completely new to the City.

Councilmembers had additional discussion and contemplated additional changes to the amendment currently under consideration.

Councilmember Shachner remarked that the amendment is not meant to suggest anything improper or a lack of motivation by this administration.

Assistant Director Swallow made the following suggested change to the proposed language in the amendment:

“if the proposal is a temporary or a permanent structure, Planning Commission shall obtain an opinion from the appropriate safety department, the building dept and/~~or~~ the city engineer. Such review shall be completed within 7 days of referral from the Planning Commission. Failure to timely to timely complete such a review shall not permit Planning Commission to reject such application.”

The language was so moved by Councilmember Shachner and seconded by Councilmember Bullock.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, O'Malley, Neff, Shachner, Rader
Nays: none

Motion passed. Resolution amended.

Council and the administration discussed the potential of having an administrative review of applications in lieu of Planning Commission review. Ms. Swallow remarked that this would not be recommended but that it would be appropriate to have an administrative review in lieu of Architecture Board of Review, as was suggested by Planning Commission.

Council and the administration discussed what kinds of projects would need approval. Ms. Swallow clarified that sliding doors opening to the outside must be approved through the outdoor dining regulations because they potentially impact the surrounding area. She stated that Planning Commission may feel comfortable approving such projects without ABR review if given the authority by Council to do so.

Motion by Councilmember Shachner, seconded by Councilmember Bullock to add a new Section 10 and renumber everything accordingly to read:

“All plans shall be reviewed administratively unless the Planning Commission specifies that the plan should be reviewed by the Architectural Board of Review.”

Discussion: Acting Director Milius mentioned that the Planning Commission recommended the above language with also a reference to the existing Outdoor Dining Guidelines in order to provide some direction and standards. She clarified that ARB would review designs and materials.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, O'Malley, Neff, Shachner, Rader
Nays: none

Motion passed.

President O'Malley expressed his preference to not include parklets in the resolution at this time without having fully considered all the implications. He expressed commitment to finding a way to include parklets after more research and discussion. He stated that Council should not hand off the resolution with parklets included and make Planning Commission grapple with the ramifications.

Councilmember Kepple expressed interest in parklets and keeping them in the resolution as a signal that they are something Council is interested in. She expressed doubt that including them in the resolution will result in a “free for all.”

Motion by President O'Malley and seconded by Councilmember Litten to amend Section 5 as follows:

“The Planning Commission may permit the use of parking lots, the public right of way, and on street parking ~~including but not limited to parklets...~~

Councilmember Litten remarked that he is hesitant to support parklets right now because Planning Commission had a mixed vote, public safety forces have concerns and because there remain outstanding questions about how parklets would successfully operate in Lakewood.

Councilmember Bullock remarked that including the language does not guarantee that the Planning Commission will approve a particular parklet. He expressed confidence that the City can work through the logistics and that moving quickly is important in this situation.

President O'Malley stated that he does not see Council as a gatekeeper to businesses but that the City needs more time to consult with neighbors and think through the legal implications of parklets.

Councilmembers discussed a potential timeline for moving forward on parklets, if not tonight.

Councilmember Shachner expressed strong support for keeping the parklet language in the resolution. He stated that removing the language will not prevent the Planning Commission from approving one, if submitted.

Ms. Milius stated that taking out the parklet language will set reasonable expectations on what the City is ready to review quickly. She was clear that the City will not be able to quickly approve a parklet. She expressed concern that a business would waste money investing in a parklet project that was ultimately not approved.

Mayor George stated that while parklets are interesting that there are too many questions to simply turn the matter over to an appointed body. She emphasized that the Planning Commission clearly requested additional guidance.

Ms. Swallow expressed sentiments like those expressed by Mayor George and Acting Director Milius.

Patty Ryan, Executive Director of the Chamber of Commerce stated that the Chamber is in favor of parklets but would prefer for there to be guidelines in place to ensure that businesses have guidance on their investments.

Councilmember Neff expressed confidence that the administration is committed to getting more information and research on parklets and that she is in favor of postponing the inclusion of parklets in the legislation so as not to mislead businesses.

Councilmember Bullock proposed to amend President O'Malley's motion to amend Sec. 5 as follows:

“The Planning Commission may permit the use of parking lots, the public right of way, and on street parking including but not limited to parklets upon development of guidelines for parklets...”

President O'Malley declined to amend his motion.

Councilmember Rader stressed the importance of giving as many tools as possible to businesses to be outside and asked for a discussion on the timeline of developing design guidelines on parklets, if excluded from the resolution tonight.

Mayor George committed to making progress on the questions of parklets by the next General Meeting on June 1st.

A roll call vote was taken on the motion as follows:

Yeas: Litten, Neff, O'Malley, Rader

Nays: Bullock, Kepple, Shachner

Motion passed.

Assistant Director Swallow requested the following amendment to Section 8 that was so moved by President O'Malley and seconded:

“Where an outdoor/seasonal dining facility or any portion of an outdoor/seasonal dining facility is located on public property, except where located in an on street parking space...”

A roll call vote was taken on the motion as follows:

Yeas: Bullock, Kepple, Litten, Neff, O'Malley, Rader, Shachner

Nays: none

Motion passed.

Motion by President O'Malley to adopt Sub. Reso. 2020-31 as amended in this meeting, seconded by Councilmember Shachner.

Discussion: In response to questions by Councilmember Bullock Mayor George expressed commitment to reviewing parklets to evaluate if they are the right fit for Lakewood.

Councilmember Bullock suggested outreach to businesses to let them know how to submit plans and what their options are.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, Neff, O'Malley, Rader, Shachner

Nays: none

Motion passed.

Motion by Councilmember Bullock, seconded by President O'Malley to refer Sub. Reso. 2020-31 back to Planning Commission.

A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, Neff, O'Malley, Rader, Shachner

Nays: none

Motion passed.

A motion was made by President O'Malley to adjourn the meeting. A roll call vote was taken as follows:

Yeas: Bullock, Kepple, Litten, Neff, O'Malley, Rader, Shachner

Nays: None

Motion passed. The meeting adjourned at 8:26 p.m.

Approved: 6/1/2020

 Marian M Bach

CLERK

 Daniel O'Malley

PRESIDENT