

**MINUTES OF THE HOUSING, PLANNING, & DEVELOPMENT COMMITTEE**  
**May 19, 2020**  
**Online Broadcast Meeting**

**Present:** Councilmembers Shachner, Kepple, Rader

**Also Present:** Councilmembers Bullock & Litten, Chief Dunphy, Assistant Director Swallow, Acting Director Milius, Allison Hennie of the Planning Department, a couple members of the public, Clerk Bach, & Deputy Clerk Lascu taking minutes

**Start time:** 5:30 p.m.

**AGENDA**

**Approval of the minutes of the May 4, 2020 Housing, Planning, & Development committee meeting**

Chairman Shachner made a motion, seconded by Councilmember Rader to approve the minutes.

A roll call vote was taken as follows:

Yeas – Kepple, Rader, Shachner

Nays – None

Motion passed. The minutes were approved.

**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. (*Anticipated referral to Housing 5/18/20*)**

Chairman Shachner gave an overview of Resolution 2020-31 and its purpose; to provide the Planning Commission with the authority to temporarily waive conditional use permits for outdoor/seasonal dining. The chairman expressed interest in creating extra patio space for restaurants as the economy reopens. He discussed details and examples where restaurants could expand space into public rights of way, such as closing off streets, blocking off parking lots for dining, and establishing parklets.

Councilmember Kepple noted the need to provide additional options to restaurants and small business owners as the economy reopens. She expressed support of the resolution.

Councilmember Rader expressed a desire to get a better understanding of how many businesses would utilize the process outlined in Resolution 2020-31 and how long it would take to get it up and running.

Councilmember Bullock highlighted a need to create language for parklets to encourage the Planning Commission to enact them wherever possible. He questioned some of the expansion figures outlined in the resolution. He added a Marine Corps quote to express the need for action.

Chairman Shachner stated that the legislation gives the Planning Commission discretion to apply any number of conditions to each business owner's case. The legislation expires on October 1<sup>st</sup>, 2020. He noted that Planning Commission members have indicated that they are willing to meet more often. He stated that Section 5 of the legislation may be the best spot to add in language regarding parklets.

Councilmember Kepple proposed suggested language in Section 5 stating "the Planning Commission may permit the use of parking lots, aka "parklets," or the public right of way as an outdoor dining facility only if there is a defined barrier protecting diners and providing ADA compliant right of way protection for pedestrians." Chairman Shachner stated his desire to not only designate the use of parklets in parking lots. It was noted that the ADA would not need to be referenced in the legislation, as its regulations would apply regardless. The language of the legislation was refined to read "the Planning Commission may permit the use of parking lot, or on-street parking including but not limited to parklets,..."

Assistant Director Swallow live tracked changes to the legislation visually on the online meeting screen.

Councilmember Rader questioned if there was a need to define in the law that businesses not block access to fire trucks/ambulances. It was noted that the Planning Commission seeks Fire & Police's input.

Acting Director Milius noted that the Planning Department was not really considering parklets due to the many considerations they raise (utilities, traffic, etc.) and noted the need to get the applications turned out quickly. Allison Hennie of the Planning Department noted a need for ABR approval if a parklet feature was to become permanent.

Chief Dunphy stated that the safety forces understand the importance of opening up Lakewood's business and providing them with many options, however he expressed concern about expanding dining onto the city's streets. He noted the need to reopen businesses and provide restaurants with seating in front of every restaurant.

Chairman Shachner noted how the legislation gives the Planning Commission the freedom to figure out each business' situation, and that it does not mandate parklets.

Councilmember Kepple commented on the potential of the parklet solution and the various tools that this legislation can provide to the Planning Commission and restaurants.

Councilmember Bullock advocated for parklet implementation regardless of the economic downturn. He described some of their benefits to the meeting's attendees.

Director Milius stated that the 30-seat maximum addition outlined in the legislation is a good starting point. The Planning Department also considered a max of 50% of the tables inside a restaurant for outdoor seating to maintain 6-foot social distancing guidelines. She also noted the need to take into consideration the impact outdoor dining might have on residential neighborhoods. She shared that the city has received applications to expand into parking lots of businesses, highlighting the safety benefits of the requests. It was stated that the city's requirement of \$5 million in liability insurance coverage has been prohibitive to sidewalk café tables. The city has expressed willingness to allow just \$1 million in liability insurance as part of this legislation. The cost of parklets was noted as potentially prohibitive, as the cost of the physical structure is in the \$15,000 to \$20,000 range. The fees associated with buying the parking space for parklets are high as well.

Chairman Shachner stated that he trusts business owners to not overextend themselves and that he is reticent to handcuff the Planning Commission if an owner is able to come up with a creative solution.

Councilmember Kepple proposed adding the need for a defined barrier only for safety or in compliance with current law in Section 5 of the resolution.

Discussion ensued regarding the \$2.5 million liability insurance cap proposed in the legislation. The city has considered lowering the liability insurance requirement if a business is not serving alcohol. There were concerns expressed about equity, as business that already have outdoor dining have already purchased the \$5 million policy that the city requires. It was noted that businesses that apply through the new process outlined in the legislation only benefit from it on a temporary basis.

Assistant Director Swallow gave an overview of the conditional use permitting process renewal and how it might typically differ from the new proposed one under this legislation. She also added the importance of businesses having adequate insurance coverage and indemnifying the city to protect taxpayer dollars in the instance of a lawsuit. Reservations were expressed about not legislating a dollar amount of insurance required.

Compromise was struck between the committee and the administration to allow for a \$1 million liability policy for businesses not serving alcohol and providing sidewalk dining.

Director Milius noted that based on the research she has done, alcohol has traditionally not been allowed in parklets. Contiguous outdoor dining has been the provision that allows the service of alcohol outdoors.

Councilmember Rader questioned why the legislation is a resolution as opposed to an ordinance. Assistant Director Swallow indicated that the intent is not to codify the changes yet, and provide a temporary boost to businesses.

The committee discussed procedure on making amendments to the legislation and the need for a special council meeting later in the week for the passage of the resolution. It was noted that the legislation would need to be referred to Planning Commission for review.

Councilmember Kepple acknowledged and summarized public comment, which expressed concerns about pedestrians being safe and maintaining ADA compliance.

Councilmember Rader shared public comment from a business owner on Madison Ave. that shared concerns about taking away parking from his retail business to benefit restaurants.

Chairman Shachner questioned process on the recommendation of the legislation to full Council, taking into account the changes made and considered during the committee meeting. Assistant Director Swallow indicated that the committee could formally make the changes as a part of the record. Councilmember Bullock indicated that the committee could refer it back to Council without making a recommendation.

Chairman Shachner made motions to make changes to legislation language in Sections 3, 5, and 8. He presented the redline version of the changes on the online meeting screen. The changes centered on outdoor dining in the public rights of way and lowering the insurance requirements for it. Councilmember Rader seconded the motion.

*Discussion: Councilmember Bullock sought clarification on insurance requirements. It was noted that businesses not serving alcohol would only be required to have a \$1 million outdoor dining liability insurance policy.*

*On the motion:* A roll call vote was taken as follows:

Yeas – Kepple, Rader, Shachner

Nays – None

Motions passed. The amendments were made to the legislation.

Chairman Shachner made a motion, seconded by Councilmember Kepple to recommend the legislation to the whole City Council.

A roll call vote was taken as follows:

Yeas – Kepple, Rader, Shachner

Nays – None

Motions passed. The legislation was recommended.

Chairman Shachner made a motion, seconded by Councilmember Rader to refer the legislation to the Planning Commission.

A roll call vote was taken as follows:

Yeas – Kepple, Rader, Shachner

Nays – None

Motions passed. The legislation was referred to the Planning Commission.

A question was posed by Eric, a resident, asking, “if you fall into the category of a restaurant that does not have an outdoor patio or liquor license, does this prevent a business from opening one?” Assistant Director Swallow indicated that under the relaxed guidelines in the legislation, a restaurant would now be able to open a patio without previously having one.

Clerk Bach noted previous discussion of a special Council meeting later in the week, detailing that the code states that the Mayor, President of Council, or 3 members of Council can call special meetings. Assistant Director Swallow concurred.

Chairman Shachner made a motion, seconded by Councilmember Rader to call a special meeting of Council for Thursday at a time to be determined later.

A roll call vote was taken as follows:

Yeas – Kepple, Rader, Shachner

Nays – None

Motions passed. A special meeting of Council was called for the upcoming Thursday.

Without objection, Chairman Shacher made a motion to adjourn.

The meeting was adjourned at 8:02 p.m.