

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: THURSDAY, JUNE 4, 2020

PORTSMOUTH, NH
TIME: 5:00PM [or thereafter]

Remote Meeting Via Zoom Conference Call

To register in advance for this meeting, click on the link below or copy and paste it into your web browser: https://zoom.us/webinar/register/WN_oOJpcvqRTkKqpurG9EVVNQ. You are required to register in advance to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. Please note, this meeting will also be broadcast on the City's YouTube Channel. Public comments for the Council's consideration can be emailed in advance via the City's web site: <https://www.cityofportsmouth.com/citycouncil/contact-all-city-councilors>.

Per NH RSA 91-A:2 III (b) the Chair has declared COVID-19 Outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-9, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

I. CALL TO ORDER

Mayor Becksted called the meeting to order at 5:05 p.m.

II. ROLL CALL

PRESENT: Mayor Becksted, Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy, Huda, Tabor and Trace

III. INVOCATION

Mayor Becksted asked everyone to join in a moment of silence.

IV. PLEDGE OF ALLEGIANCE

Mayor Becksted led in the Pledge of Allegiance.

V. NEW APPLICATION – TUSCAN MARKET SIDEWALK CAFÉ LICENSE APPROVAL

Mayor Becksted stated that this is a special circumstance and the City Council will review the application for Tuscan Market this evening, which was denied at Monday's meeting. He said it is important for the City Council to look at the modifications submitted and the space available on the sidewalk where RiRa was located, and has now closed. He indicated the modifications to the application will allow the restaurant to function and access to the public would remain. Mayor Becksted said that the public will be weighing in on this matter.

City Manager Conard said more than a handful of staff worked over 6 hours on this matter. She stated the plan meets all of the requirements.

Attorney Bosen, representing Tuscan Market, spoke to the modified application. He stated City Manager Conard wanted a better plan and to open up the corner to allow better access to the entire area. He said the plan still needs some additional work with COVID-19 restrictions.

Councilor Huda asked about the spacing of seats. Attorney Bosen indicated the seats will be 6 feet apart to comply with COVID requirements.

Architect Rob Harborsen spoke regarding the location of tables and chairs and space requirements. Councilor Huda said what she can tell is there is only a 4 foot clearance. Mr. Harborsen said there is a 3 foot aisle between the areas for access. Councilor Huda stated she is looking for a 6 foot clearance for COVID requirements.

City Manager Conard said the plan is non-COVID compliant but will be compliant, if approved.

City Attorney Sullivan advised the City Council that Sidewalk Obstructions are a policy decision of the City Council on how sidewalks will be utilized and the Council has legal authority to grant these requests.

Attorney Derek Durbin said the letter represents the RiRa building and his clients moved quickly to try and get a new tenant. He stated part of the marketing is the outdoor spaces. He suggested that the City Council stipulate that the approval expires once there is a signed tenant for the space. Attorney Durbin said there is a workable solution to find middle ground.

Mr. Harborsen said the outside dining was between the two sets of stairs.

Mr. Faro, owner of Tuscan Market, stated he would not be in favor of eliminating the seating if you find a tenant and maybe we could make modifications. He stated it is a very challenging time and we need to work and collaborate together.

Councilor Trace moved to accept the plan as presented with the understanding that the license is temporary through Columbus Day and we are trying to create a situation that is viable. Seconded by Councilor Whelan.

Councilor Lazenby stated he would like to have public comment before action is taken by the City Council.

City Attorney Sullivan stated it is Mayor Becksted's decision when public comment would take place.

Mayor Becksted stated action will not take place until after public comment.

Councilor Trace said she is in agreement and she would like to hear from the public before a vote is taken. She stated she would hold off on her motion until all have weighed in with comments.

Councilor Kennedy expressed concerns regarding the seating and location. She stated she does not want the seating to be the entire downtown. She said people should not have to step off the sidewalk into the parking area because of the placement of tables and chairs.

Assistant Mayor Splaine said he sees value with the original plan. He stated RiRa will be bought by another restaurant and would like to move forward. He stated we need to use some of the parking spaces. He indicated he supports the original proposal but would also support a compromise.

Mr. Faro said he suggests to approve this until October and once October is up he would be willing to collaborate and allow for a plan to have seating outside. He said we are facing difficult decisions and need to work with the building owner.

City Manager Conard said RiRa seating is the patio and has up to 30 seats.

Assistant Mayor Splaine said he would like the restaurants to work with Attorney Durbin and share the seating area.

Mr. Faro said he would be willing to work with the new tenants on seating arrangements.

Councilor McEachern thanked everyone for working on this so quickly.

Mr. Harborsen said 10 tables and 40 seats is the maximum space but the number will reduce by a third due to COVID requirements.

Mayor Becksted said modifications could occur if a tenant moves in and we would work with them and staff.

Councilor Kennedy said that anyone should be able to have a place to sit in Market Square or purchase goods and sit in the chairs.

Attorney Bosen stated the tables and chairs belong to Tuscan Market and we need to keep restaurants in business.

City Attorney Sullivan stated the tables and chairs are placed on city property through a sidewalk encumbrance and anyone can sit there.

Councilor Lazenby said we need swift action to help the businesses.

Councilor Whelan said he is willing to modify the plan if former RiRa has a new tenant, and time is of the essence. He said let's move forward, the plan works for everyone.

Councilor McEachern said he would support this plan and in the future we have a process where the City Manager can approve these. He said this is important and he would like to move forward to approve this request.

Councilor Huda said that this is public space and we need to accommodate the public. She said she does not want to be forced into the road due to the placement of tables and chairs.

VI. PUBLIC COMMENT

Colby Gamester said accommodations need to be taken into account for the next building owner. He said the outside space is integral and appeals to his client.

Patrick Ganz said he supported the 4-5 decision, Monday evening by the Council. He would support the plan this evening because there are great possibilities that are ahead of us.

Tony Bouzakine thanked the City and business owner for trying to get business to succeed. He said all other plans need the same attention that Tuscan Market is receiving.

Attorney Derek Durbin said the City Council needs to allow use of the area. He said Tuscan Market does need to work with a new tenant that moves into the former RiRa. He said there is a level of interest for the space.

Joe Faro said it is public seating. He urged the City Council to vote and we will revisit this at the end of the licensing period.

Councilor Tabor asked for clarification on public encumbrances. City Attorney Sullivan provided a detailed explanation of encumbrances.

Councilor Trace moved that the City Council approve the new agreement with the stipulation that should there become a tenant into the neighboring property that we give the City Manager the authorization to renegotiate between the two parties to make it satisfactory to both. Seconded by Councilor Whelan.

Councilor Kennedy said she would like to leave the 9 tables to the left for public access. She said it is open to everyone but not for those consuming alcohol.

Mayor Becksted said this is a good compromise and it is our property.

Councilor Lazenby said he feels the motion is putting the business on unsure footing.

Councilor McEachern said Mr. Faro has always left the area open for everyone. He said it is important that he would be willing to give us some of the tables so a business could survive there. He said he supports the compromise and would like to move forward.

Councilor Huda said she would like to see the final COVID approved specifications on this plan.

On a roll call vote 7-2, motion passed. Assistant Mayor Splaine, Councilors McEachern, Whelan, Kennedy, Tabor, Trace and Mayor Becksted voted in favor. Councilors Lazenby and Huda voted opposed.

VII. ADJOURNMENT

At 7:20 p.m., Councilor Trace moved to adjourn. Seconded by Councilor Kennedy. On a unanimous roll call vote 9-0, motion passed.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK