



## City Council AGENDA REPORT

**DATE:** 10/12/22

**AGENDA OF:** 10/25/2022

**DEPARTMENT:** Economic Development

**SUBJECT:** Permanent Outdoor Dining Program Update: First Reading of Parklet Ordinance for Public On-Street Parking Spaces (ED)

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**RECOMMENDATION:** Motion to:

- 1) Introduce for publication an ordinance establishing a permanent parklet program citywide; and
  - 2) Direct staff to bring the Parklet Guidelines and Parklet Fee Schedule for adoption at the November 15, 2022 City Council meeting; and
  - 3) Direct staff to coordinate with the Coastal Commission and process a Coastal Permit to authorize the implementation of the Parklet Ordinance for the construction, use, or operation of parklets within the coastal zone under Chapter 5.83 of the Santa Cruz Municipal Code (SCMC); and
  - 4) Direct staff to initiate the process of repealing SCMC Section 24.10.2341 "Outdoor Curb Extension Area" pursuant to SCMC Chapter 24.06.
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**BACKGROUND:** In light of the devastating impacts that the pandemic has had on the local economy and for locally owned businesses in particular, the City Manager, acting in his capacity as the Emergency Services Director, issued two related Executive Orders to establish the Temporary Outdoor Expansion Program (temporary program) to address the ability for businesses to expand commercial activity in the public right of way and other outdoor spaces (Executive Order 2020-11 executed on June 4, 2020 and Executive Order 2020-15, issued on July 30, 2020). On December 8, 2020, the City Council adopted Emergency Ordinance 2020-27, incorporating the earlier Executive Orders allowing for the outdoor expansion of commercial activity in the public right of way and other outdoor spaces and extending the timeframe to October 1, 2021.

On June 3, 2021, Governor Newsom sent a letter urging local jurisdictions to consider extending existing programs and zoning that allow outdoor expansion areas among other options until December 31, 2021. In response to the Governor's letter and the ongoing impacts to business from COVID restrictions these conditions, on June 22, 2021, the City Council adopted Emergency Ordinance No. 2021-14, which extended Ordinance No. 2020-27, allowing for the temporary use of certain areas of the public right of way and private property for commercial activity through December 31, 2021.

Cognizant of the prolonged negative impacts to local businesses, the City Council on November 9, 2021 adopted an uncodified Ordinance No. 2021-21, further extending the temporary program through December 31, 2022.

At the August 24, 2021 City Council meeting, Council directed staff to start working on any necessary revisions to the Municipal Code for future Council consideration to reflect the desire to expand outdoor dining in private and public on-street parking (parklets) citywide. Staff was directed to finalize the revisions to the parklet design guidelines including approved parklet designs and materials, safety features, accessibility requirements, and lighting and shade materials and to propose revisions to the fee structure for parklets and private outdoor dining. Staff was additionally directed by Council to evaluate the potential to waive, modify or offset fees on an appropriate time scale to facilitate pandemic business recovery.

**DISCUSSION:** The work to adopt permanent outdoor dining programs has been divided between two different types of outdoor dining: parklets (outdoor dining in public on-street parking spaces) and private property outdoor dining. The following staff report and ordinance pertains to outdoor dining in public on-street parking spaces only. Private property outdoor dining is the subject of a separate staff report and recommendations for Council consideration.

Following Council direction in August 2021, Economic Development (ED) staff has been working to develop a parklet ordinance and program that allows temporary outdoor dining areas in public on-street parking spaces to remain in place and establishes clear guidelines for safety, design, and operations to guide the transition from temporary to permanent use and establishes a permanent parklet program citywide going forward.

This work has involved researching the development of permanent parklet programs in other communities, conducting outreach to businesses, and working interdepartmentally to discuss how to bridge our existing programs and improvements that could be made to transition from the temporary program into a revised streamlined and cost effective permanent parklet program.

**Parklet Ordinance & Program:**

ED has been working to develop a permanent Parklet program ordinance and design guidelines to transition from the Temporary Outdoor Expansion Program. The ordinance has been developed and reviewed in coordination with the City Attorney's office and the interdepartmental parklet team from the Fire, Police, Public Works (PW), and Planning and Community Development (Planning) Departments.

ED staff has conducted business and community outreach on the parklet program and ordinance development since early 2021 through surveys, conducting feedback meetings through the Downtown Association and with temporary parklet operators once draft preapproved designs and design guidelines were prepared. Staff has also participated in group discussions with regional cities with outdoor dining programs to share best practices and lessons learned. Additionally, staff has been meeting one on one with businesses to discuss needs, considerations, impacts, and unique circumstances related to outdoor dining and the temporary program.

Staff has also consulted with the Downtown Commission's (DTC) parklet Ad Hoc Committee (Commissioners Brennan, Davis, and Ferrara) initially established at the October 15, 2020 and

reactivated twice over the last two years. Current Commissioners reviewing the latest recommendations include Commissioners Ferrara, Brennan and Kelly.

Staff provided an update on the parklet ordinance to the DTC at their September 22, 2022 meeting, the commission recommended that the City Council approve an ordinance to establish a permanent parklet program citywide, levy fees for parking meter revenue replacement in the parking district and adopt an extension of Ordinance 2021-21 to extend the temporary outdoor expansion program until March 31, 2023. The Downtown Commission also directed the Parklet Ad Hoc Committee to work with staff on the parklet program details including the parklet fee issue, the potential use of parklet space by retail and other downtown business uses, forgivable loans and possessory interest tax and to report back to the Downtown Commission at the next scheduled meeting. Staff met with the Parklet Ad Hoc Committee to discuss the details of the ordinance and program. Overall, the committee was supportive of the draft parklet ordinance and guidelines with two members expressing desire to be able to review and provide feedback on the full details of the pre-approved designs and partially forgivable loan program before consideration of the ordinance by City Council.

Staff is preparing to bring the pre-approved designs and loan program for Council consideration at the November 15, 2022 meeting. Staff will continue to meet with the Committee to provide more program details as they become available. Staff also presented the parklet ordinance to the Transportation Public Works Commission at their October 17, 2022 meeting and received a unanimous recommendation to City Council to adopt the ordinance, levy fees, and extend the temporary program until March 31, 2023 for parklets.

#### *Parklet Ordinance:*

The parklet ordinance sets out the framework for the parklet program and establishes the parklet guidelines, permit requirements, operating standards, and enforcement mechanisms. The permanent parklet ordinance establishes a staff level permitting process through the Economic Development Department to review and approve permit applications for permanent parklets citywide which will require annual permit fees, operational requirements, and annual inspections for compliance. Prior to the pandemic and the temporary program, parklets were limited only to side streets in Downtown, due to the success of the temporary program that operates citywide, the new ordinance will maintain this expansion of parklets throughout the City. To date, there are a total of 35 active temporary parklets: 26 in the Downtown, 8 in the Beach area and Wharf, and 1 on the Westside.

The parklet ordinance limits the use of parklets to only food and drinking establishments. While the temporary program allowed retail and personal services to operate a temporary parklet during the pandemic, there has been limited use with only one retail business operating in the temporary Cathcart Street road closure and one other retailer expressing interest in potentially using a parking space for classes and events. Retailers have expressed more interest in use of the sidewalk instead of a parklet because it is easier to staff and monitor right outside their doors. With limited interest from non-food and beverage businesses, staff recommends limiting the program to apply to food and beverage business activity only.

The parklet guidelines stay consistent with many of the requirements from the temporary program but provide some substantial changes to strengthen the accessibility, safety, and aesthetics of the parklets that are allowed as a long-term permitted use. The temporary parklets have been regulated with the expectation that they would not be permanent structures which

resulted in some limited short-term exceptions from building, fire, and public works regulations mandated by the state and consistent with safety best practices. In allowing parklets on a more permanent basis, it is necessary to address these limited exceptions. Some examples of these changes include setbacks within the parking spaces, removal of temporary membrane structures (tents and canopies), vector control measures, and installation of permanent safety barriers rather than the water filled barriers previously provided by the City.

*Parklet Guidelines & Design Options:*

The parklet guidelines (see attachment "Draft Parklet Guidelines") were developed through review of the regulations for the parklets that were allowed prior to the pandemic downtown and added criteria based on the operation of parklets under the temporary program. The interdepartmental staff team provided input on the requirements specific to traffic engineering, accessibility, building code, and fire code requirements. Staff conducted outreach on the draft parklet ordinance and guidelines in May 2022 to receive feedback from businesses through an online public meeting and conducted an online survey following the meeting. Over 60 responses were received and helped inform modifications for the final ordinance language and design and operations guidelines.

Under the permanent program, businesses will be able to apply for two parking spaces to be used for a parklet, although exceptions may be made for additional spaces depending on site specifications. Businesses will be able to construct a parklet using a wood, concrete, or other sturdy material base to construct a platform for the parklet that is level with the sidewalk and maintains storm drain clearance. The parklet program design guidelines provide specific information about the height of perimeter walls, use of lighting, shade cloths, umbrellas, and heaters. Staff is providing the draft guidelines for review at the October 25 City Council meeting and proposes to bring the final guidelines for adoption by resolution at the November 15, 2022 City Council meeting.

Under the temporary program, businesses have made a variety of investments for parklets, with some businesses building full parklet structures and others building only some or minimal components to be operable as a temporary parklet. Under the permanent parklet ordinance, the businesses will be able to apply for a parklet permit to either retrofit their existing temporary parklet, use a pre-approved design the City has developed, or design a custom parklet. Businesses wanting to retrofit their temporary parklets will request an inspection from staff of their existing parklet for compliance with guidelines and will be required to submit a plan showing how the parklet will be modified for approval with their application. The application review is streamlined for the pre-approved designs and some retrofits depending on the level of improvements needed and will be reviewed for site specific conditions by PW and ED. Out of necessity, custom designs will require full plan review under the parklet permit process which will include review by ED, PW, Planning, and Fire.

Staff has been working with local landscape architecture firm, Dillon Design Associates, to create two pre-approved design options and cost estimates that would allow a business to utilize design and construction drawings drafted by licensed design professionals to reduce the design time for development of their parklet. Staff presented the draft pre-approved design options in the public meeting which ranged in cost between \$50,000 to \$75,000. Businesses provided feedback in the meeting and in the follow-up survey that the consultant estimated costs were prohibitively expensive. In response to that feedback, staff has been working with the designers to revise the pre-approved designs to provide lower cost options and take into consideration

design preferences and the desire for many to be able to have more customization of colors and materials within the pre-approved designs.

Staff has also incorporated more detail in the permitting and review process for custom designs to clarify that businesses are not limited to only the pre-approved designs, however the preapproved designs will have the most streamlined review process and custom designs will incur hourly charges for review. Additionally, staff has been developing a parklet loan program, with up to 50% of the loan forgivable over a five-year period. ED staff intends to bring the preapproved design details and cost estimates, as well as details on the loan program to the November 15, 2022 City Council meeting for review and approval.

#### *Parklets in the Coastal Zone:*

Following a recommendation by the City Council, staff will coordinate with the California Coastal Commission (CCC) to process a Coastal Permit to authorize the implementation of the Parklet Ordinance for the construction, use, or operation of parklets within the coastal zone under SCMC Chapter 5.83. Use of a parking space for commercial activity constitutes "development" under the Coastal Act and triggers the need for a Coastal Permit.

#### *Transition Period to Permanent:*

With the temporary program currently set to expire December 31, 2022, staff recommends an extension of the temporary program through the end of March 2023 to provide an additional transition and overlap period between the temporary and permanent program and allow time for interested businesses to submit an application to the City for a permanent parklet. This recommendation to extend the temporary program is a consideration to extend the existing temporary program ordinance and will be discussed and considered separately on the same agenda at the October 25, 2022 City Council meeting.

All eligible businesses that want to operate a permanent parklet will be required to apply for a permanent parklet permit under the new program. Businesses operating existing temporary parklets will be permitted to keep their temporary outdoor dining in place while their permits are under review and they prepare for construction or retrofit, regardless of the proposed temporary program expiration, provided they have submitted an application prior to the March 31, 2023 expiration date.

#### *Parklet Program Application Process and Fees:*

The following is a summary of the application and permitting process for the permanent parklet program:

1. Businesses will complete a parklet permit application to either request permanent approval of their existing temporary parklet in compliance with the permanent guidelines or to propose new construction of a parklet using a preapproved or custom design with the following information:
  - a. Basic Business Owner & Property Owner Information
  - b. Drawing of the parklet area by a licensed design professional showing:
    - a. Location of parklet on the street, relationship to sidewalk, dimensions of parklet, and entrances/exits.
    - b. Layout of all parklet furniture, fixtures, signage, support posts, lighting, plantings, trash receptacles, etc.
  - c. Letter of approval from neighbors if parklet encroaches on adjacent business' frontage.
2. Staff will review the application to approve or request modifications consistent with the ordinance and guidelines.

3. Once application is approved, staff will issue the parklet permit that outlines annual fees, standard operational requirements, and annual inspection.
4. Once the permit is issued, businesses will begin construction of their new parklet or modifications to their existing parklet and staff will complete a final inspection to issue a certificate of approval prior to operation of the permanent parklet.

Staff intends to bring the parklet fee schedule for Council review and approval at the November 15, 2022 City Council meeting. The proposed fee schedule includes the following:

1. Application Fee:
  - a. Preapproved and Retrofitted Parklet: \$500 or
  - b. Custom Design Parklet: \$500 plus additional actual costs relating to processing the permit will be charged at the applicable city staff's hourly rate set forth in the City's Unified Master Fee Schedule.
2. Economic Development Parklet Annual Inspection Fee (beginning year two of each permit): \$250
3. Annual Permit Fee:
  - a. Annual Permit Fee for Metered parking spaces: \$2,000 per space
  - b. Annual Permit Fee for Unmetered parking spaces: \$5.88 per square foot, or equivalent to roughly \$1,000 per space
4. Appeal Fee: \$519
5. Additional Costs: To be charged at the applicable city staff's hourly rate set forth in the City's Unified Master Fee Schedule.

The annual fees for parklets at metered spaces citywide are collected as parking meter revenue replacement set at \$2,000 per space annually with the ability to modify the fee depending on rate changes and actual revenue per space data. The \$2,000 annual fee is equivalent to about \$5.50 of daily revenue per parking space. The fees charged in the parking district Downtown would be received by the parking district fund, any parklets approved on the Wharf would be received by the Wharf fund and all other meter locations would be received by the general fund.

Parklets in unmetered spaces would be charged an annual fee set at \$5.88/sf, the same fee charged to existing café extension licensees for sidewalk dining. A typical parklet is around 350 square feet for two spaces which would result in an annual fee of approximately \$2,058. While this amount is about half the annual fee for a metered parklet, the unmetered spaces are not collecting revenue and the intent of the fee is to recover the value for a private business to lease the public area for commercial use rather than recovering meter revenue replacement. Staff is also proposing a \$250 annual renewal fee which would begin the second year of each permit and includes the cost for Economic Development staff to conduct annual inspections of parklets for compliance with the operational requirements.

Staff has provided a summary of Bay Area Cities Parklet Programs which includes information about the permit process and fees as a comparison. The City's fees are comparable, but still below those charged by the City of Capitola and the City and County of San Francisco. The City of Burlingame's annual fees are higher than the proposed fees for the City of Santa Cruz's program when the monthly cleaning fee is combined with the annual per space fee.

Based on interest of existing temporary program permit holders, staff anticipates up to 28 downtown businesses will participate in the permanent program, utilizing an estimated 56

parking spaces. There are currently four businesses outside of the downtown utilizing parklets; two in metered spaces and two in unmetered spaces.

Staff has reviewed the potential to waive, modify, or offset fees and seeks further Council direction in this area. The temporary program has operated for just over two years at no charge to the participating businesses as a resource for business recovery during the pandemic and staff time has not been accounted for in the implementation and management of the program. With the transition to the permanent program, the proposed program fees go towards the ongoing staff time to review and approve applications and the revenue replacement for the annual use of the parking spaces. From staff's review of Bay Area cities' programs, many jurisdictions are charging their full annual fees with some providing one-time waivers of application fees for businesses operating temporary parklets. While staff would like to recommend a first-year waiver of fees, we recognize the impact to the General Fund, parking fund and wharf funds are significant, totaling approximately \$121,755 per year. A further discussion and recommendation on fee considerations will be provided to Council for discussion and consideration at the November 15th Council meeting.

**FISCAL IMPACT:** The creation of the permanent parklet program will result in minimal replacement revenue to the parking district and general fund. Based on interest of existing temporary program permit holders outside of the Coastal Zone, staff anticipates up to (28) businesses will participate in the permanent program utilizing an estimated fifty-six (56) parking spaces located in the Downtown parking district and one (1) business operating in unmetered spaces. The City would generate an estimated annual revenue of \$121,755, minimally covering lost metered space revenue and staff related expenses to process permits and annually inspect parklets.

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**ATTACHMENTS:**

1. Ordinance
2. DRAFT Parklet Permit Guidelines
3. Summary of Bay Area Cities Parklet Programs