

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING TITLE 8 (STREETS, SIDEWALKS, AND RIGHTS-OF-WAY) TO ADD REGULATIONS RELATING TO PARKLETS IN THE CITY, AND MAKING A FINDING OF EXEMPTION UNDER CEQA

WHEREAS, the Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, on June 5, 2020, the City Manager, acting as the Director of Emergency Services, issued Executive Order No. 20-01 allowing temporary outdoor dining on public and private property. On August 28, 2020, the City Manager issued Executive Order No. 20-02 outlining a revised program for temporary outdoor business regulations in San Bruno for those for businesses that were not allowed to operate indoor dining or have restrictions on indoor capacity operations during the pandemic; and

WHEREAS, the City seeks to transition the temporary outdoor business regulations from an emergency response into a longer term outdoor dining parklet program beyond the pandemic. The purpose of this is to allow restaurants or food or beverage service uses the opportunity to offer outdoor dining in parklets for economic and community vitality. Parklets contribute to an active, pedestrian friendly street experience in the downtown; and

WHEREAS, the City Council considered options for allowing parklets in the City at a Study Session held on September 14, 2021 and January 24, 2023. At the conclusion of the Study Sessions, Council directed staff to proceed with preparation of municipal code amendments and related to parklet regulations and an associated parklet permit program to provide businesses an opportunity to provide outdoor dining in the public right-of-way; and

WHEREAS, it is in the public interest for the City to establish reasonable, uniform and comprehensive regulations of parklets that could be established within the City's public rights-of-way on San Mateo Avenue in the downtown through the establishment of parklet regulations and an associated parklet permit program; and

WHEREAS, Title 8 of the City's Municipal Code governs the permitting, installation, and regulation of obstructions within the City's public rights-of-way; and

WHEREAS, the City's public rights-of-way are a uniquely valuable public resource, closely linked with the City's character, making the regulation of parklets in the public rights-of-way necessary to protect public health, safety, and general welfare, and preserve the City's character and aesthetic quality; and

WHEREAS, on February 28, 2023, the City Council conducted a duly noticed public meeting and received testimony from City staff and all interested parties regarding the amendments to Title 8 (Streets, Sidewalks, and Rights-of-Way) to introduce the ordinance adding regulations relating to parklets in the City's public rights-of-way.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN BRUNO ORDAINS AS FOLLOWS:

Section 1. The City Council of the City of San Bruno, based on the facts in the staff report, written and oral testimony, and exhibits presented, makes the following findings of facts in support of the proposed Municipal Code amendments regarding establishment of parklet regulations and an associated Parklet Permit program:

1. The proposed ordinance is consistent with the General Plan of the City of San Bruno.
2. This ordinance has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and the San Bruno environmental review procedures and is Categorically Exempt.
3. The proposed ordinance to establish provisions for parklets in the City right-of-way will not be detrimental to the public health, safety, and general welfare of the Citizens of San Bruno.

Section 2. Section 8.04.040 (Encroachment) of San Bruno Municipal Code Chapter 8.04 (Definitions) is hereby amended to read as follows, with additions shown in underlined text and deletions shown in ~~strikethrough~~:

8.04.040 Encroachment. "Encroachment" shall mean:

- A. The construction, reconstruction, repair, replacement, restoration or improvement of any street, or sidewalk, or of poles, overhead wires, and associated overhead structures thereon.
- B. The installation of any sign which will extend over any sidewalk.
- C. The temporary deposit of building materials within a public right-of-way in connection with a construction or development project.
- D. The painting of any street address number on any portion of a street right-of-way.
- E. Providing, operating, or maintaining outdoor dining on a temporary basis within the public right-of-way entirely within a Parklet.

Section 3. A new Section 8.04.065 (Parklet) is hereby added to Chapter 8.04 (Definitions) of the San Bruno Municipal Code to read as follows:

8.04.065 Parklet. "Parklet" shall mean a temporary sidewalk extension installed on public parking space(s) within the public right-of-way, that provides more space and amenities for outdoor dining operated and maintained by the business establishment conducting the outdoor dining. The amenities may include tables, chairs, umbrellas, and other items for the consumption of food and beverages served by the restaurant or food or beverage service use.

Section 4. A new Chapter 8.40 (Parklets in the Public Right-of-Way) is hereby added to Title 8 (Streets, Sidewalks, and Rights-of-Way) of the San Bruno Municipal Code to read as follows:

8.40 PARKLETS IN THE PUBLIC RIGHTS-OF-WAY

8.40.010 Purpose and intent.

The purpose and intent of this chapter is to reasonably regulate and provide a uniform and comprehensive set of standards and requirements for the orderly development, siting,

installation, construction, operation, maintenance, and removal of parklets in the public rights-of-way. This chapter seeks to protect public health, safety, and general welfare, and preserve the city's character and aesthetic quality.

8.40.020 Definitions.

As used in this chapter, the following words and phrases shall have the following meanings, unless otherwise specified:

- A. "City" means the city of San Bruno.
- B. "City manager" means the city manager of the city, or the city manager's authorized representative.
- C. "Department" means the department of public works of the city or its duly appointed successor agency.
- D. "Parklet" means a temporary sidewalk extension installed on public parking space(s) within the public right-of-way, that provides more space and amenities for outdoor dining operated and maintained by the business establishment conducting the outdoor dining. The amenities may include tables, chairs, umbrellas, and other items for the consumption of food and beverages served by the restaurant or food or beverage service use.
- E. "Parklet Program" means the uniform and comprehensive set of standards and requirements for the orderly development, siting, installation, construction, operation, maintenance, relocation, and removal of parklets, as adopted by resolution of the city council.

8.40.030 Administration.

- A. Director of public works. The director of public works is responsible for administering this chapter and establishing rules and regulations, in addition to any City Council adopted rules or regulations, for this purpose. All such rules and regulations must be in written form and posted on the city's website or otherwise made publicly available to prospective applicants. As part of the administration of this chapter, the director of public works may:
 - 1. Interpret the provisions of this chapter;
 - 2. Establish reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as the director of public works deems necessary or appropriate to organize, document and manage the application intake process;
 - 3. Develop and implement standards and procedures governing the placement and modification of parklets consistent with the requirements of this chapter;
 - 4. Develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the director of public works finds necessary, appropriate or useful for processing any application governed under this chapter;
 - 5. Determine the amount of and collect, as a condition of the completeness of any application, any fee established for permits governed under this chapter established in the master fee schedule;

6. Establish deadlines for submission of information related to an application;
7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
8. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and
9. Take such other steps as may be required to timely act upon applications for placement of parklets, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

8.40.040 Applicability.

This chapter applies to all applications to construct, install, operate, modify, reconstruct, remove, or otherwise provide for parklets within the public right-of-way on San Mateo Avenue between El Camino Real and Huntington Avenue, except as provided otherwise in this chapter below.

8.40.050 Parklet permit requirements

- A. Parklet permit required. Any applicant seeking to construct, install, modify, maintain, or engage in an activity relating to a parklet in, on, under, or above the public right-of-way that is subject to this chapter, shall obtain a parklet permit pursuant to the requirements of this chapter prior to conducting any work related to such parklet. Minor maintenance within the limits of a constructed parklet by the owner or operator for the cleanly day-to-day operation of the parklet will not require an encroachment permit.
- B. Permit application form. The applicant shall submit a complete, duly executed parklet permit application in a form approved by the director of public works, which may be updated from time to time. The application will not be considered duly filed or complete unless submitted in accordance with the requirements of this chapter and the Parklet Program. Applicant must pay a permit application processing fee, as set by the master fee schedule, at the time the application is submitted.
- C. Applicant. The applicant of any parklet shall be either 1) the property owner(s) or 2) the owner(s) of the restaurant or food service use which the parklet is directly utilized by for the purposes of outdoor dining.
- D. Property owner authorization. If the property owner(s) is not the permit applicant, the explicit written consent of the property owner(s) is also required in the permit application.

8.40.060 Minimum approval requirements.

All parklets in the public right-of-way shall:

- A. Comply with all applicable state and federal laws including the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and all applicable health and safety requirements, and as these rules may be amended or superseded;

- B. Be designed, modified, or maintained to minimize impacts on the surrounding community, including but not limited to visual and noise impacts, impediments to access, and other impacts that would create a public nuisance or safety hazard;
- C. Be planned, designed, located, and erected in accordance with the parklet standards and any applicable administrative design and engineering standards adopted by the director of public works; and
- D. Comply with all applicable local and state building codes, including building code structural requirements and all applicable rules and laws, including the Parklet Program.

8.40.070 Parklet permit review process and applicable standards.

- A. The city shall not approve any request for a parklet permit except upon a complete and duly filed application on the then-current form prepared by the city. The application shall comply with this chapter and any other written rules and policies the city may adopt consistent with this chapter, including but not limited to, the parklet rules and regulation established by the director of public works or adopted by the city council.
- B. The director of public works, community and economic development director, fire marshal, and chief building official or duly appointed designee(s) of the director of public works, community and economic development director, fire marshal, and chief building official shall review all applications for the parklet permit. The review process shall ensure compliance with the parklet standards, and all other applicable laws except that no other permit, or modification of any other permit, shall be required prior to the approval of a parklet permit.
- C. Administrative design and engineering standards and application requirements. The director of public works may develop, and from time to time amend, administrative design and engineering standards and application requirements consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. In the event that a conflict arises between the parklet standards adopted by city council by resolution and the administrative design and engineering standards adopted by the director of public works, the parklet standards adopted by city council by resolution shall control.

8.40.080 Parklet permit approvals and denials; notices.

- A. Decision. The director of public works shall approve, conditionally approve, or deny a complete application for a Parklet Permit.
- B. Required findings. The director of public works may approve or conditionally approve an application for a parklet permit when the director of public works finds:
 - 1. The proposed project meets the definition for a "parklet" as defined by this chapter;
 - 2. The proposed parklet complies with all applicable requirements of this chapter;
 - 3. The application is deemed complete by the director of public works;
 - 4. The proposed project complies with the parklet standards as determined by the director of public works;

5. The applicant has demonstrated that the proposed project will be in compliance with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act;
 6. The proposed parklet will not incommode the public use of the public right-of-way;
 7. The proposed construction plan and schedule will not unduly interfere with the public's use of the public right-of-way; and
 8. The applicant certifies that the proposed parklet complies with all federal and state standards and laws.
- C. Conditional approvals; denials without prejudice. Nothing in this chapter is intended to limit the ability of the director of public works to conditionally approve or deny without prejudice any application for a parklet permit as may be necessary or appropriate to ensure compliance with this chapter.
- D. Decision notices. The director of public works shall notify the applicant and property owners(s) of the decision rendered on the parklet permit electronically through the city's online permitting system, by email, or by first class mail. The decision notice shall include a stamped copy of the approved parklet plan as well as any associated conditions of approval.
- E. No Possessory Interest. No possessory interest in the City's right-of-way is created by a Parklet Permit.

8.40.090 Standard conditions of approval.

The following conditions of approval shall apply to all parklet permits approved under this chapter. The conditions of approval shall be in addition to the city encroachment permit general conditions, and any additional conditions of approved imposed by the director of public works.

- A. Permit fees. The parklet permit permittee shall be subject to all applicable fees and charges for the issuance and operation of a parklet permit, which shall be established in the master fee schedule. The permittee shall also be responsible for paying all costs associated with the parklet installation, maintenance, and operation.
- B. Parklet permit annual use of space fee. The parklet permit permittee shall be subject to the parklet permit annual use of space fee established in the master fee schedule. This is an annual fee charged for the temporary private use of the city public parking space, as well as to cover the cost of annual City inspections for condition and safety. Prior to any permits being issued, this fee must be paid in full for the first year, along with the prorated amount for the remainder of the fiscal year ending on June 30, consistent with the business licensing schedule. The annual fees due for the subsequent years shall be paid on the same term as the business license and in advance for the upcoming fiscal year. Failure to pay the parklet permit annual use of space fee will result in a revocation of the parklet permit.
- C. Maintenance. Parklet permittees are required to maintain, at their sole expense, parklets in clean, safe, and accessible manner. Permittee shall also be responsible for paying all costs associated with the parklet installation, maintenance, repairs if damaged, and operation. The permittee must correct or repair the parklet within ten (10) days after the city's notice for corrective action; after which the city reserves the right to take any action it deems

necessary, which may include revocation of any applicable permit(s). Parklet permittees who fail to properly and sufficiently maintain the cleanliness, safety, and accessibility of their parklet. If maintenance issues are not resolved, parklet permittees may be required by the City to remove the parklet at their own expense. Violation of permit terms or parklet requirements shall constitute a violation of the city's Municipal Code.

- D. Inspection and reporting. The permittee under the parklet permit, when directed by the city, must perform an inspection of the parklet and submit a report to the department on the condition of the facility to include any identified concerns and corrective action taken or to be taken. The permittee is responsible for any costs associated with necessary actions performed by the city due to permittee's failure to comply with this section and with the parklet standards. The permittee has the burden to demonstrate compliance with this chapter.
- E. Expiration. The parklet permit shall be null and void if construction is not substantially commenced within six (6) months of the permit being granted.
- F. Abandonment. Abandoned parklets shall be removed by the last known owner of record of such parklet, at the sole cost of said owner and to the satisfaction of the city. For the purposes of this chapter, a parklet shall be considered abandoned when it is no longer used by the permittee to provide outdoor dining or food or beverage service use for a period of sixty (60) days. It shall be the obligation of the applicant of any parklet permit not in active use to respond to any comments issued by the city within thirty (30) calendar days of their transmittal by the city or the parklet shall be considered abandoned.
- G. Insurance. The permittee and operator shall obtain and maintain insurance in compliance with the City of San Bruno Encroachment Permit General Conditions.
- H. Business license. The business utilizing the parklet shall be required to obtain and maintain a valid City business license at all times.
- I. No smoking. "No Smoking" signs shall be posted on the premises in compliance with Section 6.56.060 Prohibitions and duties generally.
- J. Security deposit. A security deposit, in an amount established by the director of public works, shall be paid to the City to cover the estimated cost of removal and/or enforcing the removal of the parklet prior to the issuance of the required encroachment permits.
- K. Non-Transferable. Parklet Permits shall not be transferable and a new parklet permit shall be required whenever the permittee is no longer associated with the operation, maintenance, or removal of the parklet or insurance policy required under subsection (G) of this section.
- L. Operational Requirements. Parklet Permits shall be operated in accordance with all operational requirements established by any permit pertaining to the restaurant or food service establishment, including those required by other agencies (e.g., Alcohol Beverage Control).

- M. Hours of operation. Hours of operation shall be no greater than the permitted business hours with the authority of director of public works to decrease them.
- N. Subletting of parklet. Subletting of parklets is strictly prohibited.
- O. City maintenance activities and access. The city may need to access the space under, above or adjacent to the parklet that necessitates the temporary or permanent removal of the permitted parklet. Upon written notification, the permittee is responsible for removing the parklet at the permittee's sole expense. The permittee will be required to obtain an encroachment permit for the removal and, if the removal requirements are temporary, reinstallation work. Under the master fee schedule, the director of public works may waive the encroachment permit fee because the removal is for the benefit of public work and access. If reinstallation does not commence within six (6) months after the permittee is authorized to reinstall the parklet, the permit is considered expired. Should the permittee fail to remove the parklet within the timeframe in the written notification, the city may perform the work. The permittee or owner will forfeit any security deposit and be required to compensate the city for any balance not covered by the security deposit for the removal expenses.
- P. Emergency activities and access. The city may need to access the space under, above or adjacent to the parklet in an emergency situation as determined in the sole discretion of the director of public works that necessitates removal or access to the permitted parklet without prior notification to the permittee. Permittee waives ability to file claims for damages caused by such activity.
- Q. Parklet discontinuance and removal. If the permittee decides they no longer want to continue to maintain and operate a permitted parklet, the permittee is responsible for notifying the department. The permittee is responsible for removing the parklet at the permittee's sole expense. Immediately upon removal, the parklet area shall be cleaned and restored to its previous condition to the satisfaction of the director of public works.

8.40.100 Permits

- A. Encroachment permit required. An encroachment permit is required to construct, install, or modify a parklet. The encroachment permit is subject to the requirements of San Bruno Municipal Code Chapter 8.16 Encroachment Permits.
- B. Revocable encroachment permit required. A revocable encroachment permit is required to allow for the parklet to occupy the public right-of-way. The revocable encroachment permit will be required to be entered into by the property owner or their authorized agent and recorded with the county recorder's office prior to issuance of the encroachment and building permits to construct the parklet. It shall be recorded against the adjacent property where the restaurant or food service use which the parklet is directly utilized by is located.
- C. Building permit may be required. A building permit may be required to construct a parklet.

8.40.110 Revocation of Permit.

Any permit or other authorized use of the public right-of-way granted under this chapter may be

revoked or modified for cause in accordance with the provisions of this section.

- A. Revocation proceedings may be initiated by the director of public works.
- B. Required findings. The director of public works may revoke or modify the parklet permit if it makes any of the following findings:
 - 1. The permittee obtained the approval by means of fraud or misrepresentation of a material fact;
 - 2. The permittee substantially expanded or altered the use or structure beyond what is set forth in the parklet permit or substantially changed the installation's character;
 - 3. The restaurant or food establishment that the parklet serves has ceased to exist or has been suspended or abandoned;
 - 4. Failure to comply with any condition of a permit issued;
 - 5. Failure to comply with this chapter;
 - 6. Failure to pay the parklet permit annual use of space fee;
 - 7. A parklet's interference with a city project or activity which seeks to protect public health, safety, and general welfare;
 - 8. A parklet's interference with vehicular or pedestrian use of the public right-of-way; or
 - 9. Failure to make a safe and timely restoration of the public right-of-way.
- C. Notice of action. The director of public works shall issue a written determination of revocation and mail the determination to the permittee within ten (10) calendar days of such determination.
- D. Upon revocation, permittee whose parklet permit or right has been revoked shall remove the parklet at their sole expense. The director of public works will have discretion in setting the timeframe of such removal.
- E. A permittee whose parklet permit or right has been revoked may have the revocation reviewed, upon written appeal as set forth in San Bruno Municipal Code Section 8.40.120.

8.40.120 Violations

Any violation of this chapter will be subject to the same penalties as a violation of the San Bruno Municipal Code Chapter 5.08 Enforcement, Nuisance Abatement and Cost Recovery.

8.40.130 Appeals.

- A. Appeals. Any person adversely affected by the decision of the director of public works pursuant to this chapter may appeal the decision to the city manager, who may decide de novo, and whose written decision will be the final decision of the city. The decision on appeal shall be made using the same criteria as set forth in subsection A of Section 8.40.090.
- B. Timing. All appeals must be filed within five (5) business days of the written decision of the director of public works, unless the director of public works extends the time therefor. Appeals shall be filed with the city clerk and accompanied by a filing fee in compliance with the master fee schedule.

8.40.140 Attorneys' fees.

In the event the city determines that it is necessary to take legal action to enforce any of the requirements under this chapter or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the city should otherwise agree in writing with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

Section 5. The City Council finds and determines that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) because there is not a possibility that the ordinance may have a significant effect on the environment. Furthermore, the City Council finds and determines that the project is categorically exempt under CEQA Guidelines Section 15301 (Existing Facilities) given that it would result in only minor alterations of existing public or private facilities (e.g., alterations to streets, sidewalks, and parking facilities) and negligible expansion of existing uses (parklets expand on outdoor dining activities already allowed in the City). Additionally, the City Council finds and determines that the project is categorically exempt under CEQA Guidelines Section 15311 (Accessory Structures) given that it would only allow for the construction or placement of minor structures accessory to existing commercial facilities (parklets would only be allowed in association with a "bona fide public eating place"). Further, as none of the exceptions set forth in Sec. 15300.2 apply (i.e., not in a particularly sensitive environment, the cumulative impact of the project is not significant, there is no reasonable possibility that the project will have a significant impact due to usual circumstances, impact scenic highways, the project would not impact a hazardous waste site, does not result in a substantial adverse change in the significance of a historic resource) the City Council finds and determines that project is categorically exempt under CEQA.

Section 6. If any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the ordinance. The city council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 7. This ordinance shall take effect and be in force 30 days after its adoption.

Section 8. The city clerk shall publish this ordinance according to law.

Rico E. Medina, Mayor

ATTEST:

Lupita Huerta, City Clerk

APPROVED AS TO FORM

Trisha Ortiz, City Attorney

---o0o---

I hereby certify that the foregoing Ordinance No.
_____ was introduced on _____, 2023, and
adopted at a regular meeting of the San Bruno City
Council on _____, 2023, by the following vote:

AYES: COUNCILMEMBERS:_____

NOES: COUNCILMEMBERS:_____

ABSENT: COUNCILMEMBERS:_____

RECUSE: COUNCILMEMBERS:_____

Lupita Huerta, City Clerk