



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: January 24, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Jovan D. Grogan, City Manager

PREPARED BY: Darcy Smith, Assistant City Manager

SUBJECT: Conduct Study Session and Provide Direction Regulations for Outdoor Dining Facilities in City Streets and on Private Property

BACKGROUND:

On March 20, 2020, in response to the COVID-19 pandemic, the City Council approved a proclamation acknowledging the existence of a local emergency and authorized the City Manager as the Director of Emergency Services to undertake emergency measures on behalf of the City. The Proclamation conferred on the Director of Emergency Services certain rights, duties, and obligations to issue any order or regulation necessary to enforce Federal, State, County, and/or local requirements, orders, and/or regulations, including any orders and regulations necessary to provide for the protection of life and property. 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.

The outdoor business program, as it applies to restaurants, has been well received by the community, including by both residents and businesses, and has added vibrancy to the City's downtown area. Given the success of this program, staff has initiated the process to transition the temporary outdoor business registration process from an emergency response into a longer term outdoor dining program beyond the pandemic. This also aligns to feedback that was received during community workshops related to the Downtown Streetscape Plan. Parklets and outdoor dining were rated as highly desirable additions to the downtown area.

On September 14, 2021, the City Council conducted a Study Session regarding new parklet regulations for outdoor dining facilities on City streets in the Downtown. A "parklet" is a sidewalk extension that provides more space and amenities for people using the street right-of-way. Parklets are typically installed within the parking lane in commercial districts. The Public Works Department initiated development of these regulations and collaborated with representatives from the Planning Division, Building Division, Fire and Police Departments to draft parklet regulations. The City Council reviewed these draft regulations and provided feedback on topics including the parklet design elements and criteria, fees, and the program approval process. Based on City Council feedback and review by staff, these revised regulations and proposed permit fees are presented now in this Study Session for review.

DISCUSSION:

Businesses in San Bruno are currently allowed to continue expanded outdoor business operations based on the City's Executive Orders until the City's State of Emergency ends. Governor Gavin Newsom announced in October 2022 that the COVID-19 State of Emergency will end on February 28, 2023. Staff will present a City Council action item for the rescinding of the Local State of Emergency in line with Governor's statewide action to rescind state's State of Emergency. Without new regulations and permit processes in place, outdoor dining established under these temporary provisions during the pandemic would need to be discontinued when the State of Emergency ends.

Outdoor dining has been successful in assisting restaurants in their commercial viability and providing a pedestrian friendly environment in commercial areas. Therefore, staff recommends adopting new regulations for outdoor dining in both City Streets and on private property. The proposed regulations will provide the City with appropriate standards and permit processes to allow businesses an opportunity to offer outdoor dining beyond the pandemic.

Outdoor Dining Regulations Purpose and Guiding Policy Objectives

The City Council may consider a number of guiding policy objectives when deciding how to regulate outdoor dining through regulations and associated permit processes. The proposed regulations have been developed to accomplish the following general purposes and guiding policy objectives:

- Allow restaurants the opportunity to offer outdoor dining beyond the pandemic for economic vitality.
- Adopt new City regulations with design and operational standards to provide appropriate regulatory oversight of private outdoor dining facilities in City streets in the downtown and on private property.
- Establish efficient and streamlined regulatory permit requirements and processes based on location.
- Contribute to an active, pedestrian friendly environment in commercial and mixed-use areas.
- Balance the needs of all users of the street and other curbside functions on San Mateo Avenue.
- Limit impacts on parking in City streets and on private property.
- Ensure aesthetically pleasing design for parklets and private property outdoor dining facilities that are compatible with the City's long-range plans including the Transit Corridors Specific Plan and Downtown Streetscape Plan.
- Provide separation between pedestrians and outdoor diners and ensure adequate ADA access in and around outdoor dining and parklets.
- Provide for protection of parklet users from adjacent vehicular traffic by requiring the installation of K-rail type traffic safety barriers.

Parklet Regulations and Permit Program

The proposed Parklet Regulations and Permit Program will provide businesses an opportunity to provide outdoor dining in the public right-of-way beyond the pandemic through issuance of an encroachment permit as provided for in Chapter 8.16 of the Municipal Code. The City has

developed Parklet Standards to regulate parklet installations. Parklets would only be permitted to be located along the curbside on San Mateo Avenue within the downtown (Central Business District) where on-street parallel parking spaces exist. The Parklet Standards provide location and setback criteria, parklet design elements, and permit requirements. Revised draft Parklet Standards are provided as Attachment 1.

Location and setback criteria consider placement of parklets and consider potential conflicts with utilities and fire hydrant and connection access. The parklet design elements cover key elements such as the platform, railing or enclosures, traffic safety protections and furnishings and fixtures. Lastly, the permit requirements section discusses permit submittal requirements, maintenance, emergency access, and parklet removal.

All parklets would require a Parklet Permit. As part of an approved Parklet Permit, an Encroachment Permit would be issued by the Public Works Department for the construction of the parklet and a Revocable Encroachment Permit to allow for the parklet to remain in the public right-of-way. Depending on the construction design proposed, a Building Permit may also need to be issued, subject to the requirements of the California Building Code and Fire Code. Permit applications and all required materials and fees, including plans must be submitted to the City's Engineering Section within the Public Works Department and approved by the Public Works Director or designee prior to any permits being issued.

The Revocable Encroachment Permit will be required to be entered into by the applicant/owner prior to issuance of the Encroachment and Building Permits to construct the parklet. All general and special conditions of the Encroachment Permit to construct within the public right-of-way will be applicable. Parklet permits would be approved subject to the discretion of the Public Works Director or designee. There may be instances where for the greater public good, a Parklet Permit needs to be revoked either temporarily or permanently. Measures will be taken to avoid this to the extent possible but may be necessary to protect the public health and welfare or if essential for utility or roadway maintenance or repair.

Parklet Permit Fees

City Manager's Executive Order No. 20-02 has allowed permit fees to be waived for businesses to operate outdoors, occupying sidewalks, public and private parking lots, and street parking spaces. Moving forward, staff recommends new fees for the Parklet Permit be established. Staff completed a fee study with cost estimates for all City staff time required to review and process the approval of parklets, which is included as Attachment 3. The fee study was prepared consistent with City Council policy to maximize cost recovery for development related services. The Parklet Permit application fee is proposed to be \$1,886. The City current has established fees in the current FY 2022-23 Master Fee Schedule for an Encroachment Permit of \$350 and a Revocable Encroachment Permit of \$615.

Staff also recommends a Parklet Permit Annual Use of Space Fee be established. This is an annual rental fee charged for the temporary private use of the City public parking space, as well as to cover the cost of annual City inspections. These annual inspections are important to evaluate continued compliance with the approved permit and City regulations. The fee would also make up for the recovery of lost parking meter revenue when they are installed in the

future. The fee was thus determining using future parking meter net revenue estimates as presented to the City Council at a meeting on November 8, 2022. This annual fee is similar to the approach by other cities. Based on the fee study prepared by staff, the proposed fee is \$2,185. Maintenance and cleaning would be the responsibility of the parklet sponsor. Staff prepared the costs for processing a parklet application by the Public Works Department and the annual use fee in Table 1.

Table 1: Proposed San Bruno Parklet Fees	
Parklet Permit Fee	\$1,886
Encroachment Permit	\$350
Revocable Encroachment Permit	\$615
Annual Use of Space Fee Year 1	\$2,185
Annual Use of Space Fee Year 2	\$2,185
Total Fees for Permit + 2 years Use	\$7,221

Staff has researched the fees and processes required by nearby jurisdictions. Staff compiled data from the following cities: Burlingame, San Mateo, San Carlos, Redwood City, and Mountain View and created a table outlining the fees required. Fees are totaled for the initial permitting and first year of parklet use, which includes required application fees, encroachment permit fees, miscellaneous permit fees, and an annual use of space fee. A detailed breakdown of the fees is included in Attachment 3. Note that there is a range of fee totals as some cities offered reduced or waived permit fees during the pandemic. Total fees for the permits and the two years of use ranges from a low of \$3,527 to a high of \$9,431, with an average of \$6,468. San Bruno's estimated fees would be \$7,221, which are in line with the surveyed cities. This estimated does not include any required building permit fees, which are calculated based on the project valuation. Additionally, there may be costs associated with insurance requirements and a security deposit which are standard requirements for encroachment permits.

In September 2021, the City Council directed Staff to consider the Architectural Review Committee as the reviewing body. However, based on staff analysis, the costs of bringing a project, such as a parklet, to the Architectural Review Committee would be approximately \$3,000 in additional fees for this public meeting. It would also add additional time as the committee only meets once per month. Therefore, staff recommends the Parklet Permit applications be processed by the Engineering Division and approved by the Public Works Director or designee with review and input from the Planning Division on the aesthetic design.

Outdoor Dining Facilities on Private Property

While finalizing the parklet regulations, staff studied the restaurant outdoor dining on private property that was established during the pandemic. There are several restaurants in San Bruno that utilized the pandemic provisions and expanded their dining areas outdoors. As stated previously, outdoor dining has been successful in assisting restaurants in their commercial viability and providing a more activating pedestrian friendly environment in commercial areas. The proposed regulations will provide the City with appropriate standards and permit processes to allow restaurants an opportunity to offer outdoor dining beyond the pandemic for economic vitality of the business.

Private property outdoor dining areas would be located entirely on private property in zoning districts that allow restaurants when incidental to and part of an indoor restaurant or food service use. In some instances, these would be very simple areas that include a few tables and chairs placed right outside the restaurants or food service use. They could also be larger, as part of an enclosed outdoor patio with more substantial improvements to ensure adequate safety, aesthetics, and building and fire code compliance. Currently, there are several outdoor dining areas in the City, ranging in size and level of improvements. Some of the smaller facilities, such as dining patios, existed prior to the pandemic. The draft Private Property Outdoor Dining Regulations provided as Attachment 2 for review. The regulations include location criteria, design and use criteria, off-street parking requirements, and permit requirements.

Specifically, the detailed design and use criteria set forth requirements for delineating fences or walls, maintenance, and furnishing and fixtures. General requirements are proposed that address a range of topics. If these regulations are supported by the City Council, zoning code amendments would be required to permit the use and establish the new permit process. These dining areas must also be in full compliance with all applicable requirements of building and fire codes, local, federal, and state provisions of the Americans with Disabilities Act (ADA) and disabled access requirements of the California Building Code, and the California Health and Safety Code.

Off-site parking is currently required for outdoor dining areas based on the parking requirements in Municipal Code Section 12.100.030 Off-street parking requirements. One (1) off-street parking space is required per 100 square feet of public floor area for eating and drinking establishments. To support business economic vitality, staff recommends that the first 200 square feet of outdoor dining area public floor area is exempt from the requirement to provide off-street parking. Payment of parking in-lieu fees may be permitted pursuant to Section 12.100.040 (I) 2. Outdoor dining areas would not be permitted to displace any existing required off-street parking spaces. Payment of parking in-lieu fees to remove required off-street parking for the restaurant use and replace these with an outdoor dining area may be permitted pursuant to Section 12.100.040 (I) 2.

The regulations propose establishment of a new administrative zoning permit, the Private Property Outdoor Dining Facility Permit. This permit would be required to be submitted to the City Planning Division and then reviewed and approved by the Community and Economic Development Director or their designee. A building permit reviewed and issued by the Building Division may also be required, subject to the requirements of the California Building Code and Fire Code. Permits may also be required for temporary tents canopy, or membrane structures from the San Bruno Fire Department.

Private Property Outdoor Dining Facility Permit Fees

Staff completed a fee study with processing costs estimates for all City staff time required to review and process the Private Property Outdoor Dining Facility Permit Fee, which is included as Attachment 3. The fee study was prepared consistent with City Council policy to maximize cost recovery for development related services. The fee is proposed to be \$1,889.

NEXT STEPS: With input and direction received from City Council, staff will finalize the regulations and fees. As currently drafted, these regulations will require municipal code amendments including zoning code amendments for the private property regulations. Amendments to the City's zoning code would require at least three public meetings, which include one Planning Commission meeting, followed by two City Council meetings to introduce and then adopt an ordinance.

Additionally, staff will develop the permit application forms and other related materials. Staff will launch educational efforts to inform the community and property owners about the proposed new regulations. The City will allow a compliance period to provide existing restaurants with outdoor dining time to submit permit applications before initiating code compliance efforts if needed.

FISCAL IMPACT: There is no fiscal impact with receiving this study session. If the regulations are adopted, new fees would be adopted consistent with City Council policy to maximize cost recovery for development related services.

ENVIRONMENTAL IMPACT: The discussion of regulations for outdoor dining facilities in City streets and on private property does not have the potential for creation of a significant environmental impact pursuant to the California Environmental Quality Act (CEQA), and as such are exempt from further environmental consideration per CEQA Guidelines Section 15061(b)(3).

RECOMMENDATION: Conduct study session and provide direction on regulations for outdoor dining facilities in City streets and on private property.

ALTERNATIVES:

None.

ATTACHMENTS:

1. Draft Parklet Regulations and Permit Program
2. Draft Private Property Outdoor Dining Regulations and Permit Program
3. Fee Study