



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

---

**DATE:** February 28, 2023

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Jovan D. Grogan, City Manager

**PREPARED BY:** Matthew Lee, Public Works Director

**SUBJECT:** Introduce, Read by Title Only, and Waive Further Reading of an Ordinance Amending Title 8 (Streets, Sidewalks, and Rights-Of-Way) to Add Regulations Relating to Parklets; Adopt a Resolution Adopting the San Mateo Avenue Parklet Program Regulations; Hold Public Hearing to Adopt a Resolution Adding Fees Related to Parklets to the Master Fee Schedule; and Find Such Project Exempt From the California Environmental Quality Act

**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. There were significant concerns about restaurants going out of business when their indoor dining was limited. On June 5, 2020, the City Manager, acting as the Director of Emergency Services, issued Executive Order No. 20-01 allowing temporary outdoor operations 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.

A "parklet" is 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. 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. 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.

On September 14, 2021, and January 24, 2023, the City Council conducted study sessions regarding the parklet program. The City Council reviewed the draft regulations, permit processes, and fees. The Council provided feedback on topics including the parklet design elements and criteria, fees, and the program approval process. Specifically, the City Council requested that the Parklet Permit application fees be set at a level below that for full cost recovery. This would provide an economic incentive to restaurant or food beverage service uses to establish parklets to add vitality in the downtown. Based on City Council feedback, the regulations and proposed permit fees were revised and are presented now for consideration for action.

**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. However, at this time, there are no parklets in City streets. 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 parklets 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 and community 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.
- Establish efficient and streamlined regulatory permit requirements and processes based on location.
- Contribute to an active, pedestrian friendly street experience in the downtown.
- 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 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.
- Set appropriate fees.

#### Parklet Regulations and Permit Program

The proposed parklet regulations and parklet permit program will provide businesses an opportunity to provide outdoor dining in the public right-of-way beyond the pandemic through the review and issuance of permits as provided for in Title 8 (Streets, Sidewalks, and Rights-of-Way) of the Municipal Code. The ordinance amending Title 8 (Streets, Sidewalks, and Rights-of-Way) to add regulations relating to parklets would add parklets as a permitted encroachment in the City's rights-of-way in municipal code section 8.04.040, add a definition of parklets in a new section 8.040.056, and add a new Chapter 8.40 (Parklets in the Public Rights-of-way). The ordinance is provided as Attachment 1.

The parklet standards, which are proposed to be adopted by resolution, would 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. Parklet Standards are provided in a resolution as Attachment 2.

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 a condition of approval 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 and recorded against the adjacent property in which the parklet is located 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 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 with the resolution to adopt the fees presented in Attachment 3. The fee study was prepared consistent with City Council policy to maximize cost recovery for development related services, using this methodology, the fee study arrived at a Parklet Permit Fee of \$1,886. The City Council provided feedback at the study session on January 24, 2023, to set this fee at an amount below cost recovery, as an economic incentive to restaurant or food or beverage service uses to establish parklets in the downtown. The parklet permit application fee, therefore, is proposed to be \$0. Staff proposes that the General Fund cover the costs associated with the reduced/eliminated permit application fees. Doing so will allow for consistent permit costs tracking and provide funding for staff positions that are budgeted to be funded by permits and user fees.

Fees for the Encroachment Permit and Revocable Encroachment Permit will be according to the master fee schedule in effect at the time of permit issuance. The City currently 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 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 offset 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.

<b>Table 1: Proposed San Bruno Parklet Fees</b>	
Parklet Permit Fee	\$0
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
<b>Total Fees for Permit + 2 years Use</b>	<b>\$5,335</b>

Staff 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. 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. Fees reflect 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. Note that there is a range of fee totals as some cities offered reduced or waived permit fees during the pandemic. San Bruno's estimated fees would be \$5,335, which is below the average of the surveyed cities. This estimated cost does not include any required building permit fees, which are calculated based on the project valuation. There may also be costs associated with insurance requirements and a security deposit which are standard requirements for encroachment permits. Additionally, a long-term security deposit will be collected to offset the cost of removing the parklet should it become abandoned. The long-term security deposit would be returned upon permanent removal of the parklet.

**NEXT STEPS:** If the City Council approves the introduction, reading by title only, and waiving further reading of the ordinance, the adoption of the ordinance would be scheduled as a consent calendar item at the next regular City Council meeting. If adopted, the ordinance would go into effect 30 days after adoption. If the City Council approves the resolution to establish new fees, the parklet permit fee will take effect 60 days after adoption and the annual use of space fee and permit appeal fee will take effect upon the effective date of the ordinance. If the City Council approves the resolution adopting the San Mateo Avenue Parklet Program Regulations, that would be effective upon the effective date of the ordinance.

**FISCAL IMPACT:** There is no fiscal impact from the introduction of the ordinance. If the ordinance and resolutions are adopted, new fees would be adopted consistent with City Council policy to maximize cost recovery for development related services with the exception of the parklet permit application fee which is recommended to be \$0. Based on City Council feedback, staff recommends to set this at \$0 as an economic incentive to restaurant or food beverage service uses to establish parklets in the downtown. As noted above, staff proposes that the General Fund cover the costs associated with the reduced/eliminated permit application fees, estimated at \$9,430 if all 5 parklets are implemented. Doing so will allow for consistent permit costs tracking and provide funding for staff positions that are budgeted to be funded by permits and user fees.

**ENVIRONMENTAL IMPACT:** This project is categorically exempt from the California Environmental Quality Act. Upon review of the California Environmental Quality Act and CEQA Guidelines, staff finds and recommends that the Council find the project exempt for the following reasons: 1) This project 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. 2) This 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). 3) This 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, 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).

**RECOMMENDATION:** Introduce, read by title only, and waive further reading of an ordinance amending Title 8 (Streets, Sidewalks, and Rights-of-Way) to add regulations relating to parklets; adopt a resolution adopting the San Mateo Avenue parklet program regulations; hold public hearing to adopt a resolution adding fees related to parklets to the master fee schedule; and find such project exempt from the California Environmental Quality Act.

**ALTERNATIVES:** None

**ATTACHMENTS:**

1. Ordinance
2. Resolution Adopting Parklet Program Regulations
3. Resolution Adopting Parklet Fees