



TOWN OF FAIRFAX

STAFF REPORT

September 7, 2022

TO: Mayor and Town Council

FROM: Heather Abrams, Town Manager
David Woltering, Interim Planning and Building Services Director

SUBJECT: Second Reading and Adoption of an Ordinance of the Town of Fairfax adding Chapter 5.58 entitled “Parklets” to Title 5 of the Fairfax Town Code and Second Reading and Adoption of an Ordinance of the Town of Fairfax amending Town Code Chapter 12.32 (“Temporary Carports and other Structures in the Public Rights-of-Way”) to include separate processes for granting encroachment permits for residential structures from commercial parklet structures, amending Section 12.32.020 to regulate only residential structures and adding Section 12.32.025 to regulate commercial structures and amending Chapter 17.096 (“CH Highway Commercial Zone”), Section 17.096.040 (“Principal Permitted Uses and Structures”) and Chapter 17.100 (“CC Central Commercial Zone”), Section 17.100.040 (“Principal Permitted Uses and Structures”) to allow parklets as a permitted use and parklet enclosures with an encroachment permit issued by the Public Works Department for commercially developed properties in the CH and CC zone districts; exempt from CEQA pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations

RECOMMENDATION

1) Waive second reading, read by title only and adopt “An Ordinance of the Town Council of the Town of Fairfax Establishing a Parklets Program and Adding a New Chapter 5.58, ‘Parklets’, to Title 5 of the Fairfax Town Code”; and

2) Waive second reading, read by title only and adopt “An Ordinance of the Town of Fairfax Amending Town Code Chapter 12.32 (‘Temporary Carports and other Structures in the Public Rights-of-Way’) to Include Separate Processes for Granting Encroachment Permits for Residential Structures from Commercial Parklet Structures, Amending Section 12.32.020 to Regulate Only Residential Structures and Adding Section 12.32.025 to Regulate Commercial Structures and Amending Chapter 17.096 (‘CH Highway Commercial Zone’), Section 17.096.040 (‘Principal Permitted Uses and Structures’) and Chapter 17.100 (‘CC Central Commercial Zone’), Section 17.100.040 (‘Principal Permitted Uses and Structures’) to Allow Parklets as a Permitted Use and Parklet Enclosures with an Encroachment Permit Issued by the Public Works Department for Commercially Developed Properties in the CH and CC Zone Districts”.

BACKGROUND

In June 2020, Fairfax began allowing outdoor dining and retail uses in response to COVID-19 restrictions, through the use of temporary encroachment permits (TEPs) to use the public right-of-way, and temporary use permits (TUPs) for private outdoor spaces. On May 5, 2021, Council extended the term for TEPs and TUPs to May 8, 2022. On April 6, 2022, Council provided direction on new requirements for outdoor dining structures, and the Council further extended the TEPs and TUPs. The Planning Commission reviewed the proposed zoning changes for outdoor dining, and then staff brought an outdoor dining ordinance to the Town Council for first reading on June 15, 2022. At that meeting, the Council directed staff to make several changes to the ordinances and parklet standards guide, and to extend the TEPs and TUPs to December 15, 2022 to allow time for the businesses to be in full compliance with the anticipated ordinances. Critical flaws in any existing parklets were to be fixed by the end of September.

DISCUSSION

The attached ordinances were introduced at the August 3, 2022 Town Council meeting with the following amendments to the Ordinance Establishing a Parklet Program:

- Correction to the fourth Whereas clause to state “Whereas, on July 6, 2022, the Town Council adopted Resolution No. 22-53, extending the expiration date for all outdoor dining and retail TEPs and TUPs to December 15, 2022; and ”
- Added a new Paragraph “F” to Section 5.58.030 that states “There shall be no amplified music in the parklets.”

If adopted tonight, the ordinances would become effective on October 7, 2022. A resolution establishing the permit and rental fees for the parklet program will be on the agenda of the Council’s October regular meeting to consider just prior to that effective date.

Staff will continue reach out to businesses to let them know about the program requirements and deadlines.

FISCAL IMPACT

None at this time.

ATTACHMENTS

- A. Ordinance Establishing a Parklet Program
- B. Ordinance Amending the Zoning Code to Allow Outdoor Dining

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ESTABLISHING A PARKLETS PROGRAM AND ADDING A NEW CHAPTER 5.58,
“PARKLETS,” TO TITLE 5 OF THE FAIRFAX MUNICIPAL CODE**

WHEREAS, the Town of Fairfax, California (Town) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in June of 2020, the Town began allowing outdoor dining and retail uses in response to COVID-19 restrictions, via temporary encroachment permits (TEPs) for businesses needing to use the public right of way, and temporary use permits (TUPs) for businesses using their own outdoor private spaces; and

WHEREAS, due to the interim nature of these TEPs and TUPs, requirements for businesses engaging in outdoor dining and retail uses were minimal and variable, and there was no fee associated with the program; and

WHEREAS, on July 6, 2022, the Town Council adopted Resolution No. 22-53, extending the expiration date for all outdoor dining and retail TEPs and TUPs to December 15, 2022; and

WHEREAS, members of the Town, including many local business owners, have expressed support for making permanent the Town’s outdoor dining and potentially retail uses program, known as parklets, with additional guidelines and permitting requirements to clarify and simplify the standards for authorized parklet uses; and

WHEREAS, the Town, pursuant to the police powers delegated to it by the State Constitution, has the authority to enact laws that promote the public health, safety, and general welfare of its residents.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES
ORDAIN AS FOLLOWS:**

SECTION 1. Recitals.

The recitals above are each incorporated by reference and adopted as findings of the Town Council.

SECTION 2. Chapter 5.58 Added.

A new Chapter 5.58, “Parklets,” is added to the Fairfax Municipal Code to read in full as follows:

“CHAPTER 5.58: PARKLETS

Section

- 5.58.010 Purpose and Intent
- 5.58.020 Definitions
- 5.58.030 Criteria
- 5.58.040 Parklet Permits Required
- 5.58.050 Parklets in the Public Right of Way; Requirements
- 5.58.060 Reviewing Authority
- 5.58.070 Standard of Review
- 5.58.080 Parklet Permit; Conditions
- 5.58.090 Bonding and Insurance
- 5.58.100 Decision and Appeals
- 5.58.110 Parklet Permit; Suspension and Revocation

5.58.010 PURPOSE AND INTENT.

It is the purpose and intent of this chapter to regulate commercial outdoor dining and other activities as determined by the Council, located within the Town of Fairfax in order to promote the health, safety, and general welfare of residents and businesses within the Town, and encourage development of a pedestrian-friendly urban environment. Commercial outdoor dining and other uses as determined shall comply with all provisions of the Fairfax Town Code, state law, and all other applicable local codes and regulations, including all applicable land use and zoning regulations imposed on commercial activities. Such outdoor commercial activity shall be referred to as Parklet(s).

5.58.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL ESTABLISHMENT. A retail, food service or dining establishment, or other place of commerce.

DINING ESTABLISHMENT. A restaurant, bar, or other commercial establishment operating a parklet area.

IMMEDIATELY ADJACENT. Adjoining, abutting, or fronting.

INTOXICATING BEVERAGES. A beverage containing alcohol, including beer, wine, or spirits.

LICENSED ESTABLISHMENT. An establishment in which intoxicating beverages are permitted by the California Department of Alcoholic Beverage Control to be served and consumed.

OUTDOOR PARKLET AREA. Portions of the public sidewalk or public right-of-way within a commercially zoned district in the Town which are used by a dining or other establishment for the serving and consuming of food and beverages or other commercial activity, including licensed establishments for the serving and consuming of intoxicating beverages.

PRIVATE PARKLET. A parklet constructed, used and maintained by a dining establishment for the exclusive use by its patrons and not available for general public use. Private Parklets require payment of rental charges, as set by the Town Council, for use of the public right-of-way.

PUBLIC PARKLET. A parklet constructed, used and maintained by a dining establishment for the non-exclusive use by its patrons and members of the public. Public Parklets do not require payment of rental charges for use of the public right-of-way due to the availability of the space to members of the public who may not be purchasing food and/or beverages from the adjacent dining establishment.

5.58.030 CRITERIA.

In order for parklet areas to be permitted, the following criteria shall be met, in addition to all other applicable land use and development standards in this Code:

(A) The parklet area shall be managed, operated, and maintained as an integral part of the underlying commercial establishment.

(B) The parklet area shall be designed in accordance with the Fairfax Parklet Standards.

(C) The proposed hours of operation for the parklet area shall be complementary to the business district in which the use is located, and shall not negatively impact residential uses.

(D) There shall be no cooking or food preparation done outside the building supporting the parklet area.

(E) Only licensed establishments may serve alcoholic beverages in the parklet area.

(F) There shall be no amplified music in the parklets.

5.58.040 PARKLET PERMIT REQUIRED.

(A) No commercial establishment may operate a parklet area in the public right-of-way or on private property unless a parklet permit is approved pursuant to this chapter.

(B) An application for a parklet permit shall be filed with the Planning and Building Department, in a form prescribed by that Department.

(C) If approved, a parklet permit shall be valid for a period of one (1) year and may be renewed for additional one (1) year periods on the same terms and conditions as set forth in the original permit.

(D) The Town Council may establish by resolution fees for the review of such applications as well as charges for the rental of the public right-of-way.

5.58.050 PARKLETS IN THE PUBLIC RIGHT OF WAY; REQUIREMENTS.

(A) Any parklet area proposed to be located in the public right-of-way shall comply with all of the following requirements:

(1) Areas used for a parklet shall not extend beyond the immediately adjacent building frontage for the associated commercial space, and not in front of another business, unless said business operators share the space by written agreement.

(2) A minimum distance of not less than a four foot (4') wide pedestrian travel aisle shall be maintained at all times.

(3) Fixed or permanent overhead coverings are permitted as long as they are constructed of transparent material. Permitted uses may use moveable umbrellas, but such umbrellas shall have a minimum seven foot (7') clearance from the ground to the lowest element of the umbrella or covering, and shall be located completely within the parklet area's permitted boundaries.

(4) Portable electric heaters may be used, but shall be located a minimum of three feet (3') from any combustible material, and completely within the outdoor dining area's permitted boundaries. Gas heaters may not be used.

(5) All fixtures and furniture used in a private parklet area shall be removed from the public right-of-way and stored out of public view during nonbusiness hours. As set forth in the Fairfax Parklet Standards, parklet areas may be required to provide a permanent barrier delineating the usable parklet area from the remaining area of the public right-of-way.

(6) The parklet area must be clearly delineated by use of reflective tape, and all parklet areas must provide adequate outdoor-appropriate electric lighting as set forth in the Fairfax Parklet Standards.

(7) No business signage may be attached or affixed to any portion of the parklet area, but branding is permitted as to the umbrellas permitted by this section.

(8) If located on publicly owned property, an encroachment permit allowing establishment of a parklet area shall be obtained from the Public Works Department.

(9) A maximum of two (2) parallel spaces of four (4) diagonal spaces may be allotted for parklet uses by the associated business.

(10) Areas used for parklets in the public right-of-way shall comply with all applicable provisions of the Building and Fire Codes, including, without limitation, maintaining proper building egress and ingress at all times, observing maximum seating capacities, providing proper circulation, and providing appropriate access to persons with disabilities.

5.58.060 REVIEWING AUTHORITY.

Unless otherwise specified, the reviewing authority for a parklet permit shall be the Town Building Official.

5.58.070 STANDARD OF REVIEW.

The reviewing authority shall approve a parklet permit application if all of the following findings can be made:

(A) The proposed parklet use is consistent with the general plan for the area, and any specific plan that may be adopted for the area.

(B) The proposed parklet use will not adversely affect existing and anticipated development in the vicinity and will promote the harmonious development of the area.

(C) The nature, configuration, location, density, and manner of operation of any proposed parklet use will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property.

(D) The proposed parklet use will not create any significant traffic impacts, traffic safety hazards, pedestrian/vehicle conflicts, or pedestrian safety hazards, and will not impede the safe and orderly flow of pedestrians along the public right-of-way.

(E) The proposed parklet use will not create any significantly adverse parking impacts as a result of employee or patron parking demand.

(F) The proposed parklet use will not create any significantly adverse impacts on neighboring properties as a result of:

- (1) The accumulation of garbage, trash or other waste;
 - (2) Noise created by operation of the commercial establishment or by employees or visitors entering or exiting the commercial establishment;
 - (3) Light and glare; or
 - (4) Odors and noxious fumes.
- (G) The proposed parklet use will not be detrimental to the public health, safety, or general welfare.

5.58.080 PARKLET PERMIT; CONDITIONS.

In approving a parklet permit, the reviewing authority may impose such conditions as may be reasonably necessary to protect the public health, safety, and general welfare, and to ensure that the proposed parklet use is established and conducted in a manner which is consistent with this chapter and the development standards for the underlying zone. The conditions imposed by the reviewing authority may include, but shall not be limited to, the following:

- (A) The appropriate setback for the proposed parklet use;
- (B) Pedestrian access and safety;
- (C) Parking requirements;
- (D) Barrier requirements;
- (E) Lighting requirements;
- (F) The time limit for the permit;
- (G) An obligation to indemnify the Town against any and all claims, liability, and damages arising from or in any way connected to the Town's issuance of a parklet permit to the commercial establishment.

5.58.090 BONDING AND INSURANCE.

(A) Upon issuance of a parklet permit in the public right-of-way pursuant to this chapter, the permittee shall post, and maintain at all times while the permit is effective, a security bond and insurance. The security bond and proof of insurance, when required, shall be deposited with the Town Clerk before the permit is issued.

(B) The amount and form of the bond shall be designated by the reviewing authority at the time of approval of the parklet permit, and shall be in an amount which is determined to be sufficient for removal of the parklet area in the event the permittee fails to comply with the conditions of the permit. The form and content of the bond shall be satisfactory to the Town Attorney. The bond may be waived where it is determined that the potential for any injury to the Town from the existence of the parklet area is minimal. Any security bond required by this section may be cash, or cash equivalent security approved by the Town Attorney and the Town Clerk.

(C) The amount of insurance shall be designated by the reviewing authority, after discussion with the Town Attorney, at the time of approval of the parklet permit, and shall be in an amount which is determined to be sufficient to adequately protect the Town, persons, and property from injuries or damages which may be caused by the use or operation of the parklet area authorized by the permit. The certificate(s) of insurance deposited by the applicant with the Town Clerk shall name the Town of Fairfax as additional insured and provide the minimum coverage amount required by the Town.

5.58.100 SUSPENSION AND REVOCATION OF PARKLET PERMIT.

(A) If the Building Official determines that evidence could be presented to the Planning Commission which may provide grounds for revocation or suspension of a parklet permit, and the Building Official believes that the Planning Commission may find that such evidence is adequate to support revocation or suspension, the Building Official may initiate a revocation or suspension proceeding before the Planning Commission.

(B) Upon initiation of a revocation or suspension proceeding, the Planning Commission shall hold a public hearing regarding the possible revocation or modification of the parklet permit. Notice of such hearing shall be provided in the same manner as the notice required for issuance of the original permit. The Planning Commission, after such hearing, may revoke or suspend the parklet permit if it determines that one or more of the following conditions exists:

(1) The permittee has violated any condition imposed on the permit approval, or violated any provision of this Code that governs, in whole or in part, the activity for which the permit was granted or the land on which it is located; or

(2) The permit was obtained in a fraudulent manner; or

(3) The operation of the parklet use constitutes or creates a “nuisance.”

SECTION 3. Compliance with CEQA. This ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the Town. The Town Council hereby finds that this ordinance is not subject to CEQA

because the adoption of this ordinance is not a “project” pursuant to Sections 15060(c)(2) and 15060(c)(3) of Title 14 of the California Code of Regulations. Specifically, this ordinance only makes permanent the ability for the Town to issue permits for outdoor business uses, which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The Town Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. Upon introduction and adoption, this ordinance shall take effect on October 7, 2022. Copies of this ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a special meeting of the Town Council on the 3rd day of August, 2022, and duly adopted at the next regular meeting of the Town Council on the 7th day of September, 2022, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk

ORDINANCE NO. ____

**ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING TOWN CODE TITLE 12, CHAPTER 12.32 ('TEMPORARY CARPORTS AND
OTHER STRUCTURES IN THE PUBLIC RIGHTS-OF-WAY') TO INCLUDE SEPARATE
PROCESSES FOR GRANTING ENCROACHMENT PERMITS FOR RESIDENTIAL
STRUCTURES FROM COMMERCIAL PARKLET STRUCTURES, AMENDING SECTION
12.32.020 TO REGULATE ONLY RESIDENTIAL STRUCTURES AND ADDING SECTION
12.32.025 TO REGULATE COMMERCIAL STRUCTURES AND AMENDING TITLE 17,
CHAPTER 17.096 ('CH HIGHWAY COMMERCIAL ZONE'), SECTION 17.096.040
(PRINCIPAL PERMITTED USES AND STRUCTURES') AND CHAPTER 17.100 ('CC
CENTRAL COMMERCIAL ZONE'), SECTION 17.100.040 ('PRINCIPAL PERMITTED USES
AND STRUCTURES') TO ALLOW PARKLETS AS A PERMITTED USE AND PARKLET
ENCLOSURES WITH AN ENCROACHMENT PERMIT ISSUED BY THE PUBLIC WORKS
DEPARTMENT FOR COMMERCIALLY DEVELOPED PROPERTIES IN THE CH AND CC
ZONE DISTRICTS**

WHEREAS, on April 6, 2022, the Fairfax Town Council directed the staff to prepare Ordinance(s) for Planning Commission consideration amending the Town Code to make parklet enclosures as permitted but regulated uses within the Town of Fairfax; and

WHEREAS, the Council determined that it is necessary to regulate parklet enclosures created by private businesses that use portions of the public rights-of-way so that the enclosures; 1) do not become a nuisance or threaten the public health safety or welfare of neighboring properties; and 2) are designed to ensure safe pedestrian, vehicular and bicycle passage around said parklet enclosures while also maintaining sufficient public parking and visibility for other nearby businesses; and

WHEREAS, the Town Council has found that parklet areas provide an added financial benefit to owners of commercial establishments and create desirable outdoor areas for residents and visitors;

The Town Council of the Town of Fairfax Does ordain as follows:

Section 1: Town Code Title 12, Chapter 12.32, ('Temporary Carports and Other Structures in the Public Rights-of-way'), is amended as follows:

§ 12.32.010 PERMITTED WHEN; PERMIT REQUIRED.

(A) Upon certain portions of public streets and public rights-of-way in the town, not being used for vehicular or pedestrian travel, temporary carports and other structures may be erected and maintained by the owners or tenants of adjoining property, upon terms and conditions and for the time prescribed in a permit issued to the property owner by the Planning Commission or the Public Works Department.

(B) It is unlawful for any person to erect or maintain any carport or other structure upon any portion of a public street or public right-of-way without a permit having been issued therefor as provided in this chapter.

§ 12.32.020 PERMIT APPLICATION; REQUIREMENTS; PROCESSING PROCEDURE FOR RESIDENTIAL STRUCTURES.

Any property owner contiguous to a public street or right-of-way, portions of which are not being used for vehicular or pedestrian traffic, where the owner has no suitable place on his or her own property or entirely on his or her own property for the erection or construction of a carport or other structure, may make application to the Planning Commission for permission to erect and maintain a carport or other structure on the public street or right-of-way, for the time and under the terms and conditions as the Planning Commission will permit. The application shall be accompanied by detailed plans and specifications for the structure, showing the extent to which, it encroaches upon any public street or public right-of-way. Upon filing of the application, the same shall be considered by the Planning Commission and acted upon.

§ 12.32.025 PERMIT APPLICATION; REQUIREMENTS; PROCESSING PROCEDURE FOR COMMERCIAL STRUCTURES.

Any property owner or commercial tenant contiguous to a public street or right-of-way, portions of which are not being used for vehicular or pedestrian traffic, where the owner has no suitable place on his or her own property or entirely on his or her own property for the erection or construction of a parklet area and/or enclosure, may make application to the Planning and Building Department for permission to erect and maintain a parklet area and/or enclosure within the public sidewalk or the public street or rights-of-way, for the time and under the terms and conditions as the Public Works Director or Building Official will permit. The application shall be accompanied by detailed plans and specifications for the structure, showing the extent to which it encroaches upon any public street or public right-of-way and that it conforms required specifications. Upon filing of the application, the same shall be processed ministerially by the Public Works Director or the Building Official and issued as long as the parklet enclosure complies with the Parklet specifications contained in Town Code Title 5.

Section 2: The first sentence of Town Code Title 17, Chapter 17.096.040(A) ('Principal Permitted Uses and Structures) and Chapter 17.100.040(A) ('Principal Permitted Uses and Structures'), are amended in part as follows:

§ 17.096.040(A). Uses within the CH zone shall be conducted entirely within a building (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.58 and § 12.32.025 for parklet uses and/or parklet enclosures) and are restricted to the following:

§ 17.100.040(A). Uses within the CC zone shall be conducted entirely within a building, (unless a business permit and encroachment permit are granted in accordance with Town Code § 5.58 and § 12.32.025 for parklet uses and/or parklet enclosures) and are restricted to the following:

Section 2: The Town Council finds that this ordinance is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to categorical exemption number 15305(b), Minor Alteration in Land Use Limitation.

Section 3: This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

Section 4: Copies of the forgoing ordinance shall, within fifteen days after its final passage and adoption, be posted in three public places in the Town of Fairfax which places are designated for that purpose:

1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road, Fairfax;
2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard, Fairfax; and
3. Bulletin Board, Fairfax Women’s Club building, located at 46 Park Road, Fairfax.

The foregoing ordinance was duly and regularly introduced at a special meeting of the Fairfax Town Council held in said Town on the 3rd day of August 2022, and thereafter adopted at a regular meeting of the Town Council, held in said Town on the 7th day of September 2022 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Stephanie Hellman, Mayor

Attest:

Michele Gardner, Town Clerk