

ORDINANCE NO. 868

**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: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN
NOES: None
ABSENT: None
ABSTAIN: None

/s/

Stephanie Hellman, Mayor

Attest:

/s/

Michele Gardner, Town Clerk