

## ORDINANCE NO. 869

**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 COMMERCIALY 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 3:** 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 4:** This Ordinance shall be in full force and effect thirty days from and after its final passage and adoption.

**Section 5:** 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: ACKERMAN, COLER, CUTRANO, GODDARD, HELLMAN  
NOES: None  
ABSTAIN: None  
ABSENT: None

/s/

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Stephanie Hellman, Mayor

Attest:

/s/

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Michele Gardner, Town Clerk