



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Barry Ng

**SUBJECT:** AMENDMENTS TO THE CURB  
CAFÉ PROGRAM

**DATE:** November 27, 2017

Approved

Date

12-7-17

## RECOMMENDATION

Accept staff report on the status of the reauthorized San Jose Curb Café pilot program (“Pilot Program”) and contemplated administrative regulations (“Parklet Regulations”) pursuant to San Jose Municipal Code Chapter 13.37 (“Ch. 13.37”) to create a formal Parklet Program.

## OUTCOME

As the Pilot Program expires on January 1, 2018, Council acceptance of this staff report and proposal to regulate Parklets through Parklet Regulations pursuant to Ch. 13.37 will allow continued private investment in San Jose’s public realm leading to a vibrant and active streetscape, encourage economic development along urban streets, and create opportunities for additional amenities along street corridors.

## BACKGROUND

As authorized pursuant to the Pilot Program, a Curb Café is a non-exclusive encroachment permit issued to an adjacent business to install and operate a seating and dining facility within the traveled portion of a public right of way. Curb Cafés repurpose on-street parking spaces to promote activation of the public street by allowing the installation of a platform built to extend the grade of the sidewalk out into the parking space. The Curb Café platform may contain temporary elements such as tables, chairs, benches, planters, fountains, artwork, bike parking, or sculptures. Once the platform is installed, the area can be used as a publicly accessible extension of an adjacent business. Curb Cafés address the community’s and City’s desire for a more vibrant and active streetscape by expanding the functionality of the sidewalk further into the public right-of way. The regulated use of public parking spaces for purposes other than parking has become more common in many other urban environments such as San Francisco, New York, Philadelphia, Seattle and Los Angeles.

Curb Cafés have previously been implemented in Downtown's SoFA District by the former San Jose Redevelopment Agency on South First Street between San Carlos and Williams streets. These Curb Cafés are actively used and adjacent businesses have invested their private capital to improve curb café aesthetics over time.

### **2013 One-year Pilot Program**

In response to the desire to expand uses in the public right-of-way, on January 8, 2013, Council approved a one-year pilot program to allow the installation of five additional Curb Cafés in San Jose (beyond the previously mentioned SoFA District Curb Cafés). Council also adopted guidelines by which Curb Cafés would be approved and permitted. The intent of the initial pilot program was to provide the opportunity for the City to determine if further expansion would be warranted. Specifically, Council approved a program which would: 1) only allow use of the on-street parking spaces for adjacent restaurants, 2) necessitate that Curb Cafés be privately funded and maintained by the applicant, and 3) require that an accompanying Sidewalk Café permit be approved by the City.

During the initial pilot period from January 2013 to December 2013, two Curb Cafés were approved and installed. The first Curb Café was installed in Downtown San José adjacent to Chacho's Restaurant at 87 East San Fernando Street (west of Third Street) and consists of a wooden platform with landscape planters, tables, chairs, and shade umbrellas (see picture on Page 3). The second Curb Café was installed in Downtown Willow Glen adjacent to the Garden Theater at 1165 Lincoln Avenue (south of Willow Street) and consists of a raised composite decking platform also with concrete landscape planters, tables, chairs, and shade umbrellas (see picture on Page 3). Although these installations resulted in the loss of on-street parking spaces, installation of both Curb Cafés were supported by the local business associations and are actively used by the adjacent businesses.



*Chacho's Curb Café - 87 East San Fernando Street*



*Garden Theater Curb Café - 1165 Lincoln Avenue*

### **2015 Two-year Reauthorized Pilot Program**

Based on renewed interest in the initial 2013 Pilot Program, on October 6, 2015, Council reauthorized the Pilot Program for an additional two-year period and expanded the number of allowed Curb Cafés to a maximum of twenty-five (inclusive of the two Curb Cafés issued under the 2013 Pilot Program). Council also directed staff to create a streamlined fee and approval process for Curb Cafés. Since October 2015, two additional Curb Cafés have been permitted at 1384 Lincoln Avenue (associated with Tac-Oh! Restaurant, see picture on Page 4) and 301 West St. John Street (associated with Henry's Hi Life Restaurant). Of these two Curb Cafés only the Curb Café for the Tac-Oh! Restaurant has been installed and is operating.

While there has not been significant participation in the expansion of the Pilot Program in San Jose, there remains strong interest from the private sector to install Curb Cafés for several businesses. Staff has been engaged with at least eight applicants on the possibility of installing Curb Cafés adjacent to their businesses and is working with the San Jose Downtown Association on ways to improve the program.



*Tac-Oh! Curb Café - 1384 Lincoln Avenue*

## **2017 Community and Economic Development Committee Presentation**

On October 23, 2017, the Pilot Program was presented to the Community and Economic Development (CED) Committee with a status report and recommendations to formalize a permanent Parklet Program with proposed amendments to address stakeholder concerns. During the meeting, staff presented the background of the Pilot Program, applicant/stakeholder feedback received so far, proposed amendments to program, and options to recover lost parking revenue as Parklets typically replace metered public parking spaces.

The Committee made the following recommendations in response to Staff's proposal:

- Set a limit of 25 curb cafés or 50 displaced metered parking spaces to minimize the loss of parking revenue.
- Return to the Committee and City Council to re-evaluate the Parklet Program once the 50 metered parking space limit is reached.
- Do not allow the use of Parklets between 2AM-7AM.
- Encourage the design of Parklets to include built-in rather than removable furniture to provide public seating during times when adjacent businesses are not in operation.
- Reaffirm the requirement that Parklets should be open to everyone.

## **ANALYSIS**

While the Pilot Program did not reach the desired goal of twenty-five new Curb Cafés since 2013, the continued interest and the success of the existing Curb Cafés provide ample justification to formalize the program to a Parklet Program and extend it beyond a pilot. The current Pilot Program expires on January 1, 2018. In addition to formalizing the Parklet Program, staff is proposing the Parklet Regulations expand the eligible applicant pool, streamline the permit process and reduce permitting costs, provide flexibility to applicants, and support private investment in City streets.

## **Parklet Regulations and Proposed Program Amendments**

On June 27, 2017, Council approved an ordinance amending Part 1 of Chapter 13.36 of Title 13 of the San Jose Municipal Code and added a new Chapter 13.37 to Title 13 to govern private encroachments within the City's public right-of-way and other public easements. Ch. 13.37 authorizes the Director of Public Works, or such other person designated by the City Manager, to approve and issue Minor Encroachment permits within the public right-of-way. Chapter 13.37 also provides the Director of Public Works, or such other person designated by the City Manager, with the authority to adopt administrative guidelines, rules and regulations for Minor Encroachments that are consistent with Chapter 13.37.

For the initial Pilot Program, Council adopted Resolution No. 76532 on January 8, 2013, which approved guidelines for the installation, use, and operation of Curb Cafés. As part of the Parklet Regulations, staff intends to amend these guidelines with a focus on the following topics: 1) Eligible Uses, 2) Hours of Operation, 3) Locations, and 4) Noise/Amplified Music.

The proposed Parklet Regulations will include those adopted by the City Council for the Pilot Program, and include the following amendments:

1. Rename the Pilot Program as the Parklet Program.
2. Expand the list of eligible applicants.
3. Allow the hours of operation from 7AM to 2AM rather than per the retail or dining use.
4. Limit Parklets to Downtown, neighborhood business districts, urban villages, specific plan areas, and historic districts.
5. Issue Minor Encroachment permits pursuant to San Jose Municipal Code Chapter 13.37 for the Parklet Program.
6. Set a limit of 50 metered parking spaces to be displaced to minimize the loss of parking revenue.

These proposed amendments are designed to complement the Department of Planning, Building and Code Enforcement's (PBCE) effort to update the Sidewalk Café program as part of the City's Easy Urbanism and Placemaking Interdepartmental Initiative. Staff will return to Council for amendments to Title 20 to remove the Sidewalk Café Permit requirement for the Parklet Program at the same time that PBCE brings its updates to the Sidewalk Café program. At the same time, Public Works will present its final Parklet Regulations to Council.

### **Expanded Uses and Applicant Pool for Parklet Program**

To allow a broader list of eligible applicants not limited only to businesses that serve food, staff proposes that the Parklet Program also allow general public seating, mini-street plazas, park-like amenities, bicycle racks, etc in addition to seating in connection with dining establishments (i.e., Curb Cafés). All uses would be subject to applicable laws, including the City's Municipal Code.

As an example, a local community group, as the applicant, could propose general seating in an on-street parking space. Additionally, retail establishment applicants proposing customer seating or property owners who wish to install Parklets as a part of their developments would be eligible to apply for a Parklet through the new program. These proposed uses would be allowed if the project meets the requirements of the Parklet Program such as 1) consent of the adjacent business/property owner and 2) compliance with an agreement to design, install and maintain the space per the City's requirements under the Parklet Program.

### **Sidewalk Café Permits**

Currently, Curb Cafés are only allowed when an accompanying Sidewalk Café Permit is approved by PBCE. Although the permit can be obtained administratively, applicants often question the need and cost for an additional permit. Additionally, at the December 2015 reauthorization of the Pilot Program, Council directed staff to "create a streamlined fee and approval process for curb cafes, and if necessary to include sidewalk cafes as well." As of August 14, 2017, Sidewalk Café Permits are issued at no cost to the applicant and are now offered as an over the counter service. PBCE is also updating the Sidewalk Café program as part of the City's Easy Urbanism and Placemaking Interdepartmental Initiative. This update will

necessitate changes to Title 20 of the San Jose Municipal Code and as proposed will result in an expanded list of eligible uses under a new Outdoor Sidewalk Seating program. These changes were summarized during a May 22, 2017, CED Committee meeting.

In recognition of these proposed changes and Council direction to create a streamlined process for Curb Cafés, staff proposes to eliminate the requirement that an applicant have an approved Sidewalk Café Permit to be eligible for a Parklet. The City will regulate uses under the proposed Parklet Program through the Parklet Regulations and will incorporate any applicable Sidewalk Café Permit requirements within the Minor Encroachment Permit issued by Public Works as necessary.

Amendments to San Jose Municipal Code Section 20.100.1420 are required to support this change. Therefore, Public Works staff, in conjunction with PBCE's proposed amendments to Title 20 of the San Jose Municipal Code for the Outdoor Sidewalk Seating program, will return to Council for approval of the elimination of a Sidewalk Café permit under the Parklet Program.

### **Parking Revenue**

The Pilot Program did not require that applicants reimburse the City for lost parking revenue for metered spaces that become unavailable due to the installation of a Curb Café. As stated previously during the 2015 Pilot Program Reauthorization, it is projected that the lost revenue from each metered parking space is approximately \$2,400 annually. At the October 23, 2017 CED Committee meeting, staff presented options for the Committee to consider regarding lost parking revenue. The Committee recommended that the City not require Parklet applicants reimburse the City for lost parking revenue due to the economic hardship associated with these fees and the potential off-setting benefits provided by activating public spaces through the creation of Parklets.

Staff will evaluate any changes to the San Jose Municipal Code or other local laws or regulations that would be necessary to waive lost parking revenue for the Parklet Program and, in conjunction with PBCE's proposed amendments to Title 20 of the San José Municipal Code for the Outdoor Sidewalk Seating program, will return to Council for approval of the waiver of lost parking revenue under the Parklet Program.

### **EVALUATION AND FOLLOW-UP**

Staff will finalize the Parklet Regulations and a one-page informational handout that provides applicants with information about the Parklet Program and make that handout available to the Mayor's Office, Council Offices, and through the City's website. In addition, staff will return to Council in conjunction with PBCE's proposed amendments to Title 20 of the San Jose Municipal Code to recommend changes necessary to implement the Parklet Program.

## **POLICY ALTERNATIVES**

**Alternative #1:** Direct staff not to adopt the Parklet Regulations.

**Pros:** No lost parking revenue due to Parklets displacing metered public parking spaces.

**Cons:** No continued activation of the public right of way through private investment and does not support General Plan strategies to “create more walkable, vibrant, mixed-use environments to spur interaction and attract talent.”

**Reason for not recommending:** Parklet programs promote public street activation, facilitate a vibrant and active street environment for pedestrians, and encourage adjacent businesses to extend seating/dining uses to the public street.

**Alternative #2:** Adopt staff’s report on the proposed action to formalize the Parklet Program, but do not approve staff recommended amendments.

**Pros:** Parklets would be allowed only in accordance with the Pilot Program guidelines.

**Cons:** Does not address applicant/stakeholder concerns regarding eligible uses, cost, and process timelines.

**Reason for not recommending:** As discussed in this memorandum, applicant/stakeholder concerns have resulted in fewer Curb Cafes than desired. By amending the Parklet Program to provide more flexibility and cost-savings to applicants, staff believes this will spur interest in the Parklet Program.

## **PUBLIC OUTREACH**

This memorandum will be posted on the City’s website for December 19, 2017, Council agenda. Additionally, the proposed amendments to the Pilot Program were prepared in coordination with the San Jose Downtown Association and the Willow Glen Business Association was and was presented at the October 23, 2017, Community and Economic Development Committee.

## **COORDINATION**

This memorandum has been coordinated with the Departments of Planning, Building and Code Enforcement, Transportation, and Economic Development as well as the City Attorney’s Office.

## **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action, however, the program was presented at the October 23, 2017, Community and Economic Development Committee. In addition, staff’s proposed changes to Title 20 of the San Jose Municipal Code to remove the Sidewalk Café permit requirement for the Parklet Program will be taken to Planning Commission before returning to Council.



**FISCAL/POLICY ALIGNMENT**

The recommended actions align with the General Plan major strategies and the City’s economic development strategies to “create more walkable, vibrant, mixed-use environments to spur interaction and attract talent.” Additionally, the Parklet program promotes public street activation by re-purposing on-street parking spaces. Parklets create a vibrant and active street environment for pedestrians and encourages adjacent businesses to extend seating/dining uses to the public street.

**COST SUMMARY/IMPLICATIONS**

There are no costs associated with Staff’s report. However, if the Parklet Program is implemented as currently contemplated, the City would not require Parklet permittees to reimburse the City for lost parking revenue at metered public parking spaces. Assuming a proposed limit of 50 metered public parking spaces to be displaced due to Parklet installations, this results in up to \$120,000 annually in lost parking meter revenue, which would otherwise accrue to the General Purpose Parking Fund.

**CEQA**

Exempt, PP17-080, CEQA Guidelines Section 15301, Existing Facilities.

/s/  
BARRY NG  
Director of Public Works

For questions please contact Michael Liw, Deputy Director, at 535-8300.

Attachment: Parklet Regulations

## PARKLET PROGRAM

### BACKGROUND AND PURPOSE

A **Parklet** is an area developed and operated by an adjacent business or property owner that replaces two parallel parking spots with elements such as planters, trees, benches, tables with chairs, fountains, artwork, or sculptures. Parklets repurpose on-street parking spots. In the place of car parking, a platform is built to bring the grade of the sidewalk out into the street. Once the platform is installed, benches, tables, chairs, landscaping, and bike parking can be placed on the platform to provide a welcoming space along the street. Parklets provide a solution to the desire for wider sidewalks and more pedestrian friendly environments. Parklets are intended to provide space for people to sit, relax and enjoy the city around them in conjunction with a neighboring business and provide aesthetic enhancements to the overall streetscape.

The Parklet Program is set with a limit of 50 metered parking spaces to be displaced to minimize the loss of parking revenue. Parklets that do not impact metered parking spaces are allowed with no limits.



*Garden Theater Parklet  
1165 Lincoln Avenue*

The eligible applicants for a Parklet are:

- (1) owner or operator of an allowed business establishment,
- (2) owner of real property on which an allowed business establishment (“tenant”) is located, or
- (3) a business association responsible for an allowed area on behalf of an allowed business establishment located in their pre-defined area boundaries.

Parklets are intended for the owner or operator’s non-exclusive use and the use of the general public. Parklets must remain publicly accessible and will require signage to this effect.

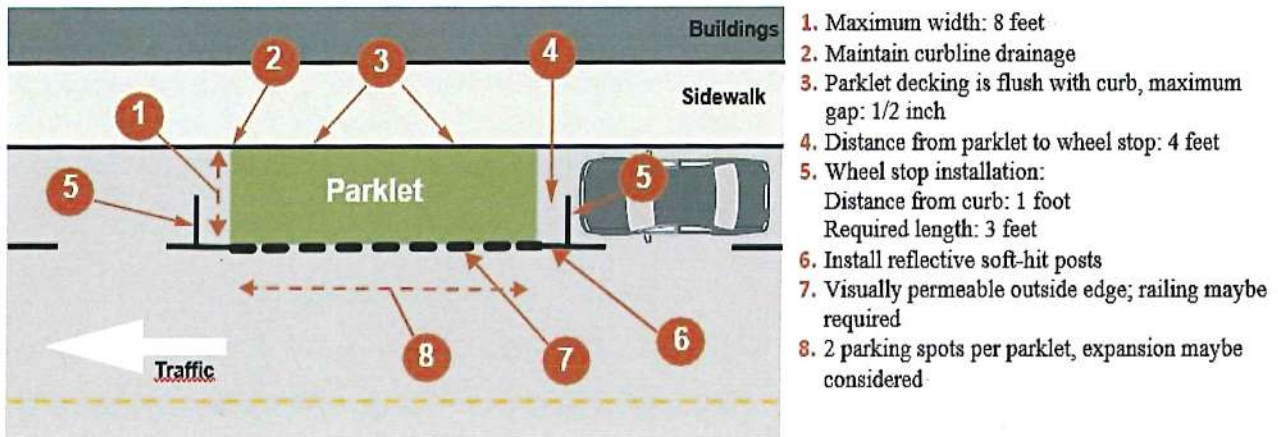
APPROPRIATE LOCATION AND DESIGN PARAMETERS

Parklets must meet all the following requirements:

1. Located 10 feet away from a corner.
2. Located on a street with a speed limit of 25 mph or less. A parklet may be allowed on streets where the posted speed is greater than 25 mph if the Departments of Transportation and Public Works determine that the applicant has addressed all safety concerns.
3. Shall not interfere with vehicle traffic lanes, including bicycle lanes.
4. The width of the Parklet must not extend beyond six (8) feet from the curb line.
5. Safe hit posts and wheel stops are required. Please see the Diagram 1 below showing the placement of these materials as a guideline for submittal.
6. An edge to the Parklet will be required, such as planters, railing, or cabling as determined by the Department of Public Works.
7. Parklets shall have vertical elements that are visible to passing vehicles without obstructing driver views.
8. Parklets are not permitted in red zones.
9. Parklets may replace a yellow zone, blue zone, or motorcycle parking if there are appropriate adjacent locations for these zones to be relocated and the applicant pays additional fees and costs to relocate these zones.
10. Parklets are not permitted in front of a fire hydrant or in any manner that restricts access to any public utility companies or City utilities.
11. Parklets shall not occupy more than two (2) parking spaces unless there are special circumstances that would be approved by the Departments of Transportation and Public Works.
12. The applicant must submit a letter of support from the property owner(s) and tenants that front the proposed Parklet.
13. The Parklet must be designed to be an aesthetic improvement to the streetscape, and must be constructed with materials that will be safe for the intended use, of high quality, durable, and beautiful.
14. Access panels to maintain the gutter and area underneath the Parklet must be included and the design must allow drainage along the gutter to pass underneath the Parklet.
15. Parklet decking must be flush with the curb and may not have more than a ½ inch gap from the curb. If this is impossible, the parklet must be ADA accessible. A minimum 48-inch ADA-accessible entryway to the parklet must be maintained for all parklets.

16. Parklet shall have a 4-foot buffer to existing adjacent driveways.

### Parklet Design Parameters



Parklet Design Parameters diagram provides only general guidance for the Parklet design. Final design elements of any application will be approved by the Department of Public Works.

### APPLICATION PROCESS

#### 1. **SUBMIT APPLICATION\***

a. **Application Form.** All Applicants must complete the application form. Applications may be denied for the following reasons:

- (1) Incomplete applications will not be accepted.
- (2) Inactivity for a period of three (3) months.
- (3) Failing to meet any required deadlines.
- (4) Not timely completing the application.

b. **Site Plan.** All Applicants must provide a plan with their application form that clearly includes and indicates all the following information:

- (1) The footprint of the proposed Parklet, including sufficient detailed information to inform the design elements on either end of the proposed parklet.
- (2) Indicate all property lines, sidewalk width, Parklet length and width, existing parking stalls, and all surface obstructions within 15 feet of the occupied area (e.g., fire hydrants, streetlights, parking meters, street trees, other parklets, etc).
- (3) The number(s) on all parking meters that are to be removed must be included in all drawings. These numbers are generally posted on the meter facing the street.
- (4) Provide as much detail as possible to aid in the Department's review of the application.

(\*The Department of Public Works offers a complimentary preliminary field review of the proposed parklet location prior to an application being formally submitted. )

- c. **Parklet Programming.** Demonstrate what type of elements you are proposing on the parklet (e.g. tables and chairs, benches, landscaping, bike parking, etc.)
- d. **Support.** A letter from fronting property owner(s) and tenants is required. Each Applicant must adequately and robustly involve its community in the development of the proposal by involving its neighbors, tenants of the subject property, and any existing merchant or neighborhood groups. The Applicant must provide reliable and verifiable documentation of support in the form of a letter, a petition, email, etc.
- e. **Encroachment Agreement.** Each Applicant must provide a signed agreement to defend, indemnify, save, and hold harmless the City and all its officer, agents, or employees from any liability for damages resulting from any and all operations under the permit in a form approved by the City Attorney.

## 2. PUBLIC WORKS DEPARTMENT REVIEW

The Public Works Department will review the application to ensure that Applicants meet the program requirements. A staff committee from various City departments (Transportation, Public Works, Planning, Economic Development, Police, and Fire) will review each complete and correct application on a first-come-first-served basis using the following criteria:

- a. Enhancing the aesthetic quality of the streetscape.
- b. Location - proposed Parklet is likely to be well used and active.
- c. Compliance with this Guideline, Chapters 13.36 and 13.37 of the San Jose Municipal Code, and any other federal, state and local laws that apply to the intended Parklet.

## 3. PUBLIC NOTICE PERIOD

If the application is accepted for the program, the City will require the applicant to complete the "Parklet Notification" letter template and send to businesses and residents within a 500 feet radius of the proposed Parklet. The public notice must be mailed out and given ten (10) calendar days. The purpose of the notice is to alert the public of an application for a Parklet and to provide the opportunity for the public to express its support for or opposition to that application. If no objection is registered, skip to Step 5. If an objection is registered, see Section 4 below.

If the application is not accepted, the applicant will have 10 days to resubmit.

- a. Documented and verifiable community support. This can include, but is not limited to, email, letters, or other written documentation.

## 4. OBJECTIONS RAISED DURING PUBLIC NOTICE PERIOD

- a. The Parklet must provide a copy of the outreach letter and list of recipients.
- b. If the Department receives objections from the public for a specific location, it will meet and review the application with the objector to determine if there are feasible

alternatives to make the Parklet acceptable. Final objections will be submitted in writing to the Director of Public Works.

- c. The City may require redesign of the Parklet to attempt to alleviate any objections.
- d. If objections to the project are still outstanding, the Director of Public Works will make a final determination on the application based on the proposal, expressed concerns, and overall benefit.
- e. If the Director ultimately rejects the application, the applicant may appeal the decision in accordance with Part 5 of Chapter 13.37 of the San Jose Municipal Code.

#### **5. FINAL PLANS SUBMITTED AND PUBLIC WORKS APPROVAL**

Applicants with an accepted initial application, the next step is to submit a fully detailed site plan, cross sections, and elevations. Public Works staff will work with the Applicant in a collaborative fashion during this period to ensure that the Parklet design is appropriate and that the final drawings produced meet requirements.

#### **6. CITY APPROVAL OF FINAL PLAN**

The Public Works Department will coordinate with the Department of Planning, Building and Code Enforcement (PBCE), the Police Department (SJPD), the Fire Department (Fire), and the Department of Transportation (DOT) for completion of the plans. Applicants may receive additional comments that will need to be incorporated into the final plan prior to permit approval.

#### **7. PUBLIC WORK ISSUES PERMIT**

- a. Within 10 days from submittal of a Final Plan, if it is determined by the Director/Department that the application satisfies all policy requirements and the Applicant has paid all necessary fees, the Department of Public Works will grant final approval and issue a permit. Revisions and resubmittals may be required.
  - (1) The permit shall include but not be limited to the following:
    - a. Address
    - b. Location Map
    - c. Plan View
    - d. Elevations
    - e. Structural Design
    - f. Construction Details
    - g. And any other requirements as determined by the Department/Director

## 8. CONSTRUCT PARKLET

Upon permit issuance and as a condition of permit approval, Applicants are required to inform the Department of Public Works no less than ten (10) days before beginning any site work. **Once an Applicant has completed installation of the Parklet, Applicant must notify Public Works Inspection.**

## 9. CALIFORNIA ALCOHOLIC BEVERAGE CONTROL (ABC)

Applicants must comply with all applicable ABC regulations regarding alcohol use for their establishment, including the Parklet. The issuance of the Parklet and Sidewalk Café permits does not constitute any ABC approval or zoning approval for alcohol use by the City.

## COSTS

At the time of submission of the initial permit application, Applicants will be required to pay the following fees for cost recovery of time and materials:

- \$671 base fee for all applications

Unless otherwise stated in this guideline, Applicants will also be responsible for all costs associated with design, installation, and removal of the Parklet.

## RESPONSIBILITIES OF THE PERMIT HOLDER

Once an application is approved, the Applicant will be required to execute a permit with the City and satisfy the following requirements:

1. **Insurance.** Permittee will be required to provide evidence of at least \$1 Million in liability insurance, naming the City of San Jose as additional insured by endorsement.
2. **Maintenance.** Permittee will be required to sign an Encroachment Agreement to keep all plants in good health and the Parklet free of debris and grime. The surface of the Parklet must be maintained daily and the area beneath the Parklet must be rinsed out at least once a week. The County Department of Public Health may require you to provide pest abatement beneath the Parklet platform. Applicants must maintain the gutter at all times to ensure proper cleanliness and drainage.
3. **Furniture, etc.** Any movable items, such as tables and chairs, must either be locked down at night or taken inside. Unsecured furniture is not permitted after Permittee's business hours.

## PARKLET REMOVAL

Applicants shall be solely responsible for removal of the Parklet and restoring the public right-of-way to its original condition upon the occurrence of one or more of the following:

- (1) the cessation of use,
- (2) failure to comply with permit conditions or other legal requirements, or
- (3) the Parklet poses a dangerous condition or threat to life or property.

The City may remove the Parklet for any of the following reasons:

- a. Failure to maintain,
- b. Violation of this Program Guideline,
- c. Violation of the Permit,
- d. Modifications unapproved by the City,
- e. When the Parklet encroachment causes a dangerous condition or threat of danger to life or property as determined by the Director of Public Works. This includes but is not limited to:
  - The Parklet is encroaching into a travel lane or bike lane
  - The Parklet has lost structural integrity
  - A gap develops between the Parklet and sidewalk
  - The Parklet creates a visibility issues
- f. As a condition of permit issuance, the Parklet Permittee shall agree in writing to authorize the City to remove the parklet at the Permittee's sole cost in the event that any of the occurrence of any of the circumstances for removal herein.

If any of the above violations occur, the Applicant will be sent a notice of the violations and, except in the case of dangerous or threatening conditions, will be given a maximum of five (5) working days to remedy the condition or remove the Parklet. If in the event that the Applicant fails to timely or adequately maintain or repair the encroachment or remove the encroachment within the five (5) working days, the permit will be terminated. Once the permit is terminated, the Parklet must be removed at the sole cost of the Applicant within three (3) calendar days. When the encroachment causes a dangerous condition or threat of danger to life or property, the permit will be terminated without the five (5) day notice and removed immediately at Applicant's cost.

The City, at its sole discretion, may pay to remove the Parklet and restore the public right-of-way to its pre-encroachment condition upon a finding that it is in the public interest in the City to fund or partially fund removal of the Parklet.

The Parklet Program aligns with many of the goals of the General Plan Envision 2040 and helps implement major strategies including Streetscapes for People (#6) and Destination Downtown (#9).

### **TRANSFER OF PERMITS**

If the Applicant sells its business interests, one of the following must be done:

1. Remove the Parklet; or
2. With the City's approval, the Purchaser and Applicant must come into the



Department and execute a new permit in the Purchaser's name with their signature and comply with all other requirements for the issuance of a permit, such as insurance.

**PILOT PROGRAM CHANGES**

The City reserves the right to amend the Parklet Program and all terms contained within it up until the point that a final permit is issued. Applicants may withdraw their application if they do not agree with any of the Guideline changes.

**QUESTIONS**

For any questions, please contact Michael Liw at [Michael.Liw@sanjoseca.gov](mailto:Michael.Liw@sanjoseca.gov) or (408) 535-3555.