

ORDINANCE NO. 2022-15

AN ORDINANCE OF THE CITY OF SANTA CRUZ ADDING CHAPTER 5.83 "PARKLETS"
TO THE SANTA CRUZ MUNICIPAL CODE

WHEREAS, due to the impacts of COVID-19 on the local economy and locally owned businesses, the city of Santa Cruz's Director of Emergency Services issued Executive Order No. 2020-11 on June 4, 2020 and Executive Order No. 2020-15 on July 30, 2020, allowing businesses to temporarily expand commercial activity in the public right of way and other outdoor spaces; and

WHEREAS, to provide more certainty to business owners with regard to the use of temporary outdoor expansions, the City Council adopted Executive Order No. 2020-11 and Executive Order No. 2020-15 as Ordinance 2020-27 on December 8, 2020, setting an expiration date of October 1, 2021 for the temporary outdoor expansions and later adopted Ordinance 2021-14 on June 22, 2021, extending the expiration date for temporary outdoor expansions to December 21, 2021; and

WHEREAS, between June 2020 to today, over 100 businesses within the city of Santa Cruz have utilized the temporary outdoor expansion program for dining ; and

WHEREAS, on August 24, 2021, the City Council directed staff to develop a program for permanent outdoor dining; and

WHEREAS, the proposed program for permanent parklets is intended to repeal SCMC 24.10.2341 governing outdoor curb extension areas and be replaced by adopting SCMC Chapter 5.38 with new standards and regulations to allow for parklets in the public right-of-way citywide; and

WHEREAS, with these new standards and regulations, the city of Santa Cruz aims to allow for streamlined approval of prototype street dining decks and aims to balance the desire for permanent outdoor dining in the public right-of-way with adequate public parking; and

WHEREAS, the proposed addition of SCMC Chapter 5.38 to allow for permanent outdoor dining in the public right-of-way is exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, sections 15301 and 15311.

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

SECTION 1. Chapter 5.83 of the Santa Cruz Municipal Code is added as follows:

“Chapter 5.83 PARKLETS.

5.83.010 - Purpose.

The purpose of this chapter is to create design and operating standards and permit requirements for outdoor dining in the public right-of-way in order to enhance the pedestrian ambiance of the city’s commercial zone districts, encourage a sense of community, and foster economic development.

5.83.020 - Definitions.

- (a) Business. “Business” means the business located on the property adjacent to the parklet.
- (b) Business Owner. “Business owner” means the owner of the business which is located on the property adjacent to the parklet.
- (c) City. “City” means the city of Santa Cruz.
- (d) Code. “Code” means the city of Santa Cruz Municipal Code, as may be amended.
- (e) Parklet Guidelines. “Parklet Guidelines” mean the standards and requirements promulgated by the Director of Economic Development consistent with this chapter regarding: parklet permitting, parklet design, size and location, fixtures and seating requirements, construction, operation, maintenance, relocation, removal, traffic and pedestrian safety and ADA accessibility.
- (f) Director of Economic Development. “Director of economic development” means the director of economic development of the city of Santa Cruz or their designee.
- (g) Independent Hearing Officer. “Independent hearing officer” means the person designated by the city manager, or the city manager’s designee, to conduct an impartial hearing of an appeal under this chapter.
- (h) Operating Standards. “Operating Standards” means the operating standards applicable to the parklets for its operation and maintenance as set forth in section 5.83.070 of this chapter, and as further specified in the Parklet Guidelines.
- (i) Parklet. “Parklet” means a street dining deck or similar level surface within the public right-of-way that extends beyond the curb and/or into a roadway or on-street parking area for use by an adjacent business as an outdoor dining area.
- (j) Parklet Permit. “Parklet permit” means the permit required prior to the construction, installation, final inspection and issuance of a certificate of approval, to authorize the use of the parklet as an outdoor dining area.

- (k) Permit Officer. "Permit officer" is the city employee designated by the Director of Economic Development to issue the parklet permit under this chapter.
- (l) Platform. "Platform" is a street dining deck that functions as the floor of the parklet.
- (m) Property Owner. "Property owner" means the owner of the property where the business is located.
- (n) Public right-of-way. "Public right-of-way" means any public street, public way, public alley, or public place and the space on, above or below it, and all extensions thereof, and additions thereto, under the ownership or control of the city of Santa Cruz and in its jurisdiction.

5.83.030 - Applicability.

No person or entity shall construct, reconstruct, operate, modify, repair, maintain, relocate, or remove a new or existing parklet within the public-right-of-way, unless a parklet permit has been obtained or as otherwise required pursuant to this chapter.

5.83.040 - Parklet Guidelines

The applicant must comply with the guidelines, policies, and procedures for parklets promulgated by the Director of Economic Development consistent with this chapter, which include but are not limited to: parklet size and location, parklet construction requirements, traffic and pedestrian safety concerns, design features, platform size, platform safety, furnishing standards, and ADA accessibility.

5.83.050 - Parklet Permit Requirements.

- (a) Application Process. Prior to issuance of a parklet permit, the business owner must complete a parklet permit application. The application will not be considered duly filed or complete unless submitted in accordance with the requirements of this chapter and the parklet guidelines.
- (b) Parklet Permit Application Fee. An application for a parklet permit shall be accompanied by a nonrefundable permit application fee in an amount approved by the city council.
- (c) Contents of Parklet Permit Application. The parklet permit application shall be submitted by the business owner, with written permission from the property owner, and filed with the economic development department on a form as approved by the economic development director, which shall require the applicant business owner to provide the following information:
 - (1) Name and address of the property owner and business owner.
 - (2) The lease term, if applicable, of the business intending to operate the parklet.
 - (3) A drawing of the proposed parklet design that complies with the parklet guidelines.

- (4) Other information that is required by the parklet guidelines and as may be required by the Economic Development Department related to the parklet consistent with this chapter, and in the interest of public health, safety, and welfare.
- (d) Other Applicable Requirements. The following conditions of approval shall apply to all parklet permits:
- (1) Comply with fire, safety, and emergency access requirements;
 - (2) Comply with all applicable state and federal laws, including the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 120101 et seq.) or successor statute, applicable labor laws, and all applicable health and safety requirements;
 - (3) Agree to comply with the operating standards set forth in section 5.83.070 of this chapter;
 - (4) Provide proof of satisfaction of the insurance requirements as established by the city;
 - (5) Agree to indemnify, defend, and hold harmless the city and designated city agents for any claims arising out of the use, accessibility, and operation of the parklet or in any way related to the parklet permit;
 - (6) Present a valid city business license issued pursuant to chapter 5.04 of this code;
 - (7) Demonstrate compliance with all requirements of the Alcoholic Beverage Control Board and any other federal, state, or local laws and regulations governing the sale and consumption of alcoholic beverages, if applicable;
 - (8) Obtain all other applicable city permits, including but not limited to a concrete permit, an electrical permit, as part of the approval process for the parklet permit; and any other applicable regulatory approvals required by local, state, or federal agencies; and
 - (9) Comply with any additional conditions and restrictions as the permit officer deems necessary for the enforcement and administration of this chapter and to protect the public safety, health, welfare and enjoyment.
- (e) Term of Parklet Permit. Unless otherwise indicated in the parklet permit, the term of the parklet permit shall be for one year. The parklet permit shall automatically renew on an annual basis upon inspection by the permit officer verifying permittee's compliance with this chapter, unless written notice is provided by either the permittee or the city of the intent to terminate the parklet permit at least 120 days prior to the renewal date. Notwithstanding this annual renewal, the permit officer may require removal of the parklet pursuant to section 5.83.090, or may suspend, revoke, or deny the reissuance of a permit for any of the reasons set forth in 5.83.100.

- (f) Annual Parklet Permit Fee. The permittee shall be charged a nonrefundable annual parklet permit fee in an amount approved by the city council.
- (g) Modifications to Parklet. No modifications to the parklet after issuance of the parklet permit are allowed unless a new parklet permit application is submitted, and is reviewed and approved by the permit officer.

5.83.060 - Permit Approvals and Denials.

- (a) Review Process. The department of economic development in consultation with the department of public works, fire department, and any other city department, as needed, shall review the parklet application to ensure compliance with the parklet guidelines and applicable laws consistent with this chapter.
- (b) Decision. The permit officer shall approve, conditionally approve, or deny a complete application for a parklet permit.
- (c) Required Findings. The parklet permit may be approved or conditionally approved by the permit officer based on findings that the application meets all of the following requirements:
 - (1) The application is deemed complete;
 - (2) The proposed parklet complies with all applicable parklet guidelines;
 - (3) The applicant has agreed in writing to comply with the terms and conditions of the permit;
 - (4) All applicable fees have been paid;
 - (5) All other applicable requirements of this chapter have been satisfied;
 - (6) The proposed construction plan and schedule will not unduly interfere with the public's use of the public right-of-way;
 - (7) The proposed parklet is in compliance with all applicable local, state, and federal laws and regulations; and
 - (8) The proposed parklet does not pose a threat to public health, safety or welfare.
- (d) Conditional Approvals; Denials without Prejudice. Nothing in this chapter is intended to limit the ability of the permit officer to conditionally approve or deny without prejudice any application for a parklet permit as may be necessary or appropriate to ensure compliance with this chapter.

- (e) Notice of Decision. The permit officer shall notify the applicant of the decision rendered on the parklet permit electronically by email or by first class mail. The decision notice shall include any conditions of approval or any reasons for denial.
- (f) Approval to Construct Parklet and Certificate of Approval.
 - (1) The approval of the parklet permit authorizes the applicant to construct and install a parklet with a licensed contractor. The parklet permit may be revoked if construction does not begin within one year of the permit's issuance absent a showing of good cause as determined by the city's parklet guidelines.
 - (2) Upon completion of the construction and installation of the parklet, and satisfaction of a final inspection by the city and compliance with applicable building and health and safety requirements, the city will issue a certificate of approval. A certificate of approval shall be required before a parklet can be occupied or used.
 - (3) The parklet permit may be revoked if the parklet does not pass final inspection, does not meet the requirements for a certificate of approval, and permittee does not correct the deficiencies in a timely manner as required by the city.
- (g) No Possessory Interest. The parklet permit grants the permittee a non-transferable revocable license to construct a parklet and operate in the parklet located in a designated encroachment area within the public right-of-way. The parklet permit does not entitle the permittee to any vested property rights or possessory interests. Compliance with the requirements for a parklet permit will not require approval of a separate encroachment permit under chapter 15.34.
- (h) Non-Transferable. Parklet permits are not assignable or transferable. A new parklet permit shall be required whenever the permittee is no longer associated with the operation or ownership of the parklet; or the permittee is deemed to have abandoned the parklet; or the parklet permit has been revoked.

5.83.070 - Operating Standards.

- (a) Parklets shall comply with all operational requirements set forth in the parklet guidelines, including but not limited to:
 - (1) Parklets may only be used by food and drinking establishments for the purpose of providing outdoor dining areas.
 - (2) Outdoor dining is the only activity allowed in the parklet consistent with the business' regular hours of operation; and in no event past 11:00 p.m. Parklets shall be closed or gated when not in use.
 - (3) Live entertainment and amplified sound is prohibited within the parklet.
 - (4) Only those licensed by the Alcohol Beverage Control Board of the State of California and approved by the city may serve and allow on-premise consumption of alcoholic beverages in the parklet.

- (5) Outdoor food preparation including but not limited to hotpots, barbecues, or other heating of food, is prohibited in the parklet. Open flame cooking is prohibited in the parklet.
 - (6) The permittee shall maintain the parklet and parklet area in a clean, sanitary, and attractive condition at all times. Elements that are visually or structurally degraded shall be replaced expeditiously.
 - (7) Parklets shall be maintained free of litter, refuse and debris. The permittee is responsible for furnishing and servicing at least one permanent trash receptacle in the parklet.
 - (8) The parklet platform shall be scrubbed and mopped daily to remove any food or drink stains. All cleaning shall be in accordance with the City's Storm Water Best Management Practices.
 - (9) Permittee shall maintain and repair the parklet at its sole expense during its placement in the public right-of-way.
 - (10) The business owner shall submit a trespass Letter of Authority with the Santa Cruz police department prior to operation of the parklet.
 - (11) Patrons of the parklet shall not be permitted to sit on or place food or drinks on the edges or railings of the parklet.
 - (12) Smoking is prohibited within parklets.
- (b) Permittee must correct any failure to comply with any of the operational requirements or other parklet guidelines within a reasonable time period as specified by the city's notice to take corrective action. If permittee fails to comply within the specified time the city may take any action it deems necessary, which may include the city performing the corrective action and charging permittee for any associated costs, including administrative costs and attorneys' fees; and the city's right to revoke the parklet permit. Permittee has the burden to demonstrate compliance with this chapter.

5.83.080 - Inspection by Officials

- (a) The parklet shall, at a minimum, be inspected annually by the economic development department, or other enforcement officials as necessary, for compliance with this chapter, any regulations promulgated pursuant to this chapter, and any permit conditions, to ensure that the parklet is maintained in good condition and does not create a nuisance to pedestrians or adjacent businesses. The city may conduct periodic safety inspections of the parklet and reserves the right to require adjustments or modifications to the parklet, or removal of any parklet elements, if the city, in the city's sole discretion, determines that such elements are unsafe, poorly designed, create access issues, pose a public nuisance, pose a threat to public health, safety, or welfare, or do not comply with the permit conditions of approval.

- (b) The permittee shall be charged an inspection fee as set by council resolution for inspections conducted pursuant to this chapter.

5.83.090 - City Authority and Removal of Parklet.

- (a) The City shall at all times retain exclusive authority over the public right of way, including the parklet. The city shall have the right to perform any and all acts of construction and maintenance in the public right of way, including the parklet to advance public health, safety or welfare.
- (b) The permittee, at their own expense, shall temporarily or permanently remove all parklet improvements and shall restore the public right-of-way to the standards of the public works department if one or more of the following circumstances exist:
 - (1) Upon reasonable prior notice to the permittee by the city, if the city determines that temporary or permanent removal is necessary for utility repair and maintenance, streetscape, for other improvements within the parklet location, or for any other reason that is in the interest of public health, safety, or welfare;
 - (2) If the business ceases operation and/or if the parklet remains inactive or abandoned for a continuous period of 6 months or more within a one-year period; or
 - (3) Upon the expiration, termination or revocation of the parklet permit.
- (c) In the case of situations involving immediate peril or hazard to the public health, safety or welfare based on the city's discretion, the city may require permittee to remove the parklet and the city may also remove any of the parklet improvements without prior notice to the permittee. The permittee is responsible for the costs of removal, and the costs of re-installing the parklet and restoring any damage to the parklet improvements if the city approves re-installing the parklet after the peril or hazard is no longer present.

5.83.100 - Denial, Suspension or Revocation of Parklet Permit.

- (a) The permit officer may deny, suspend or revoke the parklet permit or application for the parklet permit if one or more of the following circumstances exist:
 - (1) The applicant submits an incomplete application;
 - (2) The applicant has made a false, misleading, fraudulent or material misrepresentation in their application for a permit, in the information required to be submitted to the city, or in response to inquiries by the city;
 - (3) The applicant has failed to obtain permission from the property owner to operate the parklet;
 - (4) The permittee expanded or altered the parklet from what was set forth in the parklet permit;

- (5) The parklet has been abandoned for a continuous period of 6 months or more within a one-year period;
 - (6) The permittee fails to comply with any of the provisions of this chapter;
 - (7) The parklet has become a host for a public nuisance or illegal activity or, poses a threat to public health, safety or welfare;
 - (8) The permittee has been issued a notice of violation or citation associated with the business or parklet;
 - (9) The permittee has violated local, state or federal law;
 - (10) The permittee has breached any condition, requirement, or restriction of the parklet permit;
 - (11) Utility repair and maintenance, streetscape, utility or other improvements within or adjacent to the parklet are required, making the parklet not practical or feasible;
 - (12) The parklet interferes with a city project which seeks to protect and promote public health, safety and welfare; or
 - (13) The parklet interferes with vehicular or pedestrian use of the public right-of-way.
- (b) If the permit officer denies, suspends or revokes a parklet permit, the permittee shall be informed in writing of the grounds for denial, suspension, or revocation, within ten (10) calendar days of such determination and the permittee shall cease operations in accordance with the notification provided to the permittee.

5.83.110 - Appeal Procedure.

- (a) The permittee may appeal a decision of the permit officer to deny, revoke, or suspend a parklet permit. The permit shall be deemed to be suspended during the pendency of any appeal.
- (b) An appeal must be initiated by submitting a written statement (signed under penalty of perjury) and payment of an appeal fee as set by city council resolution, to the city clerk within ten calendar days of the date of the notice of the permit officer's decision.
- (c) The city manager, or the city manager's designee, shall appoint an independent hearing officer to conduct an impartial hearing within twenty-one calendar days from the notice of appeal. The independent hearing officer shall be selected pursuant to the qualification and selection procedures established by the city manager for enforcement hearing officers under Title 4 of this code. Notice of the hearing shall be provided by the city clerk to the appellant not less than five days prior to the hearing date. Each party shall have the opportunity to present evidence in support of their case. The standard of proof shall be by

a preponderance of the evidence. Thereafter, the independent hearing officer, in his or her discretion, shall consider the relevant evidence and the record of the matter, and determine whether to affirm, set aside, or modify the decision appealed therefrom. Thereafter, the appellant shall be notified of the final decision via first class mail. The decision of the independent hearing officer, shall be final, subject only to judicial review pursuant to Code of Civil Procedure Sections 1094.5 and 1094.6.

5.83.120 - Enforcement.

- (a) Violations of this chapter are hereby declared to be public nuisances, and any violation of this chapter may be remedied or prosecuted pursuant to Title 4 of this code.

- (b) If a code enforcement action results in the revocation or suspension of an active permit, then the appeal rights shall be as stated in section 5.83.110 above, and not through Title 4.

5.83.130 – Severability

If any section or portion of this chapter is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the chapter, which shall continue in full force and effect.

SECTION 2. Environmental Review. The City Council finds and determines that the adoption of this ordinance is considered a “project” under Section 15378(a)(1) of the California Environmental Quality Act (CEQA) Guidelines, typically subject to environmental review. Pursuant to Section 15061(b)(2), such an action may be exempted from environmental review if the City finds that the project is “exempt pursuant to a categorical exemption (see Article 19, commencing with Section 15300) and the application of that categorical exemption is not barred by one of the exceptions set forth in Section 15300.2.”

Accordingly, the City Council finds and determines that this ordinance is categorically exempt from CEQA pursuant to California Code of Regulations, Title 14, section 15301, given that it would result in only minor alterations of existing public or private facilities that would negligible or no expansion of use. The ordinance is also categorically exempt under section 15311, as the ordinance allows only for the construction or placement of minor structures appurtenant to an existing commercial facility.

The categorical exemptions set forth above are not barred by an exception set forth in section 15300.2. The allowance of permanent outdoor dining in the public right of way will not have a significant cumulative impact over time, will not have a significant effect on the environment due to unusual circumstance, will not impact scenic highways, will not impact a hazardous waste site, and will not cause a substantial adverse change in the significance of a historical resource.

SECTION 3. Severability. If any section or portion of this chapter is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the chapter, which shall continue in full force and effect.

ORDINANCE NO. 2022-15

SECTION 4. This ordinance shall take effect and be in force thirty (30) days after final adoption.


PASSED FOR PUBLICATION this 25th day of October, 2022, by the following vote:

AYES: Councilmembers Kalantari-Johnson, Golder, Meyers; Vice Mayor Watkins; Mayor Brunner.

NOES: Councilmembers Cummings, Brown.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: 
Sonja Brunner, Mayor

ATTEST: 
Bonnie Bush, City Clerk Administrator


PASSED FOR FINAL ADOPTION this 15th day of November, 2022, by the following vote:

AYES: Councilmembers Kalantari-Johnson, Cummings, Brown, Meyers; Vice Mayor Watkins; Mayor Brunner.

NOES: None.

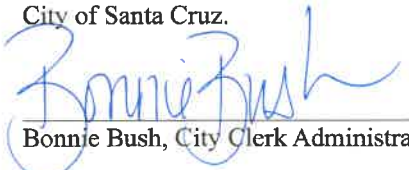
ABSENT: Councilmember Golder.

DISQUALIFIED: None.

APPROVED: 
Sonja Brunner, Mayor

ATTEST: 
Bonnie Bush, City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2022-15 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.


Bonnie Bush, City Clerk Administrator