



Office of the City Manager

## ACTION CALENDAR

June 15, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Eleanor Hollander, Acting Economic Development Manager

Subject: Referral Response: Path to Permanence: Outdoor Dining and Commerce in the Public Right-of-Way

### RECOMMENDATION

Take the following actions to allow for increased outdoor dining and commerce to be permitted permanently in the public right-of-way:

1. Adopt first reading of an Ordinance revising BMC Section *14.48.190 Parklets* and BMC Section *16.18 Right of Way Encroachments and Encroachment Permits* to simplify the permitting process for the conversion of temporary parklets and outdoor commerce installations after a declared local emergency; and
2. Adopt first reading of an Ordinance revising BMC Section *14.48.150 Sidewalk Seating* to expand the areas and scope of activities that may be permitted via a sidewalk seating permit (a type of engineering permit) after a declared local health emergency, implement a new fee for the use of parking spaces for commercial activity; and
3. Adopt a Resolution empowering the City Manager to implement a fee schedule for structures and activities permitted in the public right of way permitted under *BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating* after the declaration of a local emergency lapses or is revoked. The resolution extends the current fee waivers for application, review, and use fees for structures and activities permitted in the public right of way permitted under *BMC Sections 14.48.190 Parklets, 14.48.150 Sidewalk Seating* and *13.44 Street Events and Block Parties* from June 30, 2021, to instead coincide with the cessation of the declared local health emergency.

### FISCAL IMPACTS OF RECOMMENDATION

The installation of parklets (conversion of on-street parking spaces into public spaces and amenities) and the expansion of the sidewalk seating program (where outdoor commerce in the public right of way is incorporated into an adjacent business' operation) to include the parking lane can result in a reduction in parking revenues to the City's Parking Meter Fund. For example, staff projects that lost parking revenue from sidewalk seating and parklet programs will total on average approximately \$3,082

per parking space annually depending on location (Attachment 4).<sup>1</sup> The total potential revenue loss per parking space, (assuming full utilization) is closer to \$6,631 annually. Using parking meter rates pre-pandemic (February 2020), the total actual annual revenue loss resulting from the existing outdoor commerce locations is \$199,864.

### *Fee Rationale*

More broadly, revenue losses to the Parking Meter Fund in theory could be slightly mitigated at least in part, by an increase in sales and use tax and business license tax revenues that will result from increased commercial activities in the public right-of-way. However, these revenues (sales and use tax and business license fees) go to the City's General Fund. Parking meter revenue instead directly supports the Parking Meter Fund which in turn supports ongoing parking management operations, including parking enforcement, and infrastructure needs.

Crucially, the parking meter revenues of both the Off Street Parking Fund and the Parking Meter Fund have been pledged to pay the City's outstanding \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016 that financed construction of the newly built Center Street parking garage. The City promised bond owners that it would maintain parking rates in an amount sufficient to pay debt service on the bonds and the costs of operating the City's off street and on street parking enterprises. This promise is called a "rate covenant." The City cannot satisfy this rate covenant with general fund monies. Therefore, the City must ensure that the Parking Meter Fund will continue to receive sufficient revenue to satisfy the rate covenant. In order to meet the rate covenant while allowing commercial activities in the parking lane, the City will need to charge businesses that use the parking lane an amount that is approximately equal to the amount that would have been received from parked cars.

### *Use Fee Calculation*

Outdoor commerce use fees will be calculated based on the use of the parking space during 9 revenue generating hours per day, 6 days per week, 52 weeks per year, less 10 meter holidays.  $9 \text{ hours} \times (6 \text{ days per week} \times 52 \text{ weeks per year} - 10 \text{ holiday days}) = 2,718 \text{ hours per year}$  at the hourly meter rate, which may range from \$0.50/hr to \$8.00/hr per BMC 14.52.120(B)(1). Use fees levied on outdoor commerce installations in the parking lane must be reflective of the parking meter rates of the area that the installation is located in (i.e., parking area/zone) and those hourly rates are subject to change based on demand responsive pricing under the goBerkeley program.<sup>2</sup> The outdoor commerce use fees will change on an annual basis based on any meter pricing changes that have occurred in the previous year. In this way, the Parking Meter Fund's

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<sup>1</sup> See *Impacts on Meter Revenue*, (Attachment 4) presented at the Berkeley City Council *Facilities, Infrastructure, Transportation, Environment & Sustainability* (FITES) Policy Committee meeting, [November 2, 2020](#).

<sup>2</sup> See goBerkeley parking pricing program, online: <https://www.cityofberkeley.info/parking-meters/>.

revenues will be replenished by fees levied on commercial activity conducted in parking spaces.

#### *Implementation of Fee Collection*

Revenues from sidewalk seating engineering permits for ongoing uses in the public right of way (other than the sidewalk) will be directed to the Parking Meter Fund. A new revenue code (840-4940-321.11-00) has been established to replenish the Parking Meter Fund (840) in the Transportation Division (49) and Parking Services (4940) account. In the future, Outdoor Commerce Use Fees will be recorded in a new budget code known as, "Outdoor Commerce License and Permits (32)", and will be processed concurrently alongside Business License Permits (321) with the Element Object code "Outdoor Commerce" (321.11).

The renewable Outdoor Commerce Use fee payments will be coordinated with the annual business license renewal cycle and the annual Outdoor Commerce Use Fee will be commensurate with the corresponding block face's price for parking. For example, in an area where the hourly meter rate is \$2, annual fee for use would be \$5,436 per parking space based on 2,718 hours of meter operation per year (9 hours per day, 6 days per week and 10 meter holidays). Many areas of the City have meter rates of \$1.50 per hour, which would correspond to annual fee of \$4,077 per parking space.

#### *Initial Permit Application Review and Fees*

The proposed changes above do not impact the existing permit application and review fees for parklet establishment, and outdoor commerce/sidewalk seating engineering permits. The process to evaluate the safety and design of outdoor commerce/parklets will continue to be handled by engineering division of the Permit Service Center. Fees collected from sidewalk seating engineering permit and parklet minor encroachment application fees will continue to go (as is standard with any enterprise fund) to offset the costs associated with permit application and site plan review of both the sidewalk seating and parklet program applications.

#### CURRENT SITUATION AND ITS EFFECTS

The COVID-19 pandemic, and the associated imperative to avoid close physical contact with others, especially indoors, continues to have lasting impacts on Berkeley's small businesses. In order to enable outdoor commerce, on June 2, 2020, the Berkeley City Council adopted a referral to the City Manager to explore strategies to expand outdoor dining and commerce so that businesses will be able to comply with health guidelines and operate with sufficient capacity to remain solvent during the duration of the current public health emergency.<sup>3</sup> On June 16, 2020 the Berkeley City Council passed an urgency ordinance to allow for sidewalk seating in the public right of way, and to waive all fees for parklets, sidewalk seating and street event permits for 'group' outdoor

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<sup>3</sup> ["Berkeley Safe Open Air Dining"](#) Berkeley City Council, June 2, 2020 meeting, item 11.

commerce installations for one year.<sup>4</sup> On January 19, 2021, the Berkeley City Council adopted modifications to the urgency ordinance to extend the time that outdoor commerce installations permitted under the urgency ordinance may be installed to 365 days after the termination of the declared City emergency due to COVID-19.<sup>5</sup>

The City has three existing programs that can be used to permit outdoor dining and commerce, and associated amenities, in the public right-of-way:

- Street event permits;
- Sidewalk seating; and
- Parklets.

This referral response establishes a path to permanence for all three types of outdoor commerce permitted during the duration of the urgency outdoor commerce ordinance. It is modeled on best practices from neighboring cities and has been developed in consultation with the business owners and operators of the nearly 40+ installations of outdoor commerce currently established in the City of Berkeley. Staff recommends that City Council keep the bulk of the changes implemented in 2020 to the municipal code sections governing the sidewalk seating and parklet programs. These changes successfully expanded outdoor commerce to be responsive to the needs of small businesses successfully operating during and after the shelter-in-place order(s) and the pandemic in general. Going forward, continuing these changes will help to bolster economic recovery and resilience in Berkeley.

Staff also recommends that City Council adopt a revised fee schedule for sidewalk seating engineering permits which authorize the City Manager to levy fees for outdoor commerce in the parking lane that are commensurate with the parking meter rate for the corresponding block face and are renewable annually by the sponsoring business. Parklet permits will continue to be permitted as minor encroachment permits,<sup>6</sup> and group outdoor commerce installations will continue to be permitted as street event permits.<sup>7</sup> Free use of parking spaces for parklets (which are reserved for non-revenue generating activity) has been City policy since before the parking revenue bond was implemented. Staff is recommending that that this policy continue, parklets (which are

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<sup>4</sup> ["Urgency Ordinance: Outdoor Dining and Commerce in the Public Right-of-Way"](#) Berkeley City Council, June 16, 2020 meeting, urgency item.

<sup>5</sup> ["Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19"](#) Berkeley City Council, January 19, 2021 meeting, item 27.

<sup>6</sup> City of Berkeley, [Fee Schedule](#) for Minor Encroachment Permits, (\$454 application fee +\$1,228 final fee= \$1,682 total per permit), online:[https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Planning/Submittal%20-%20Encroachment.pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Submittal%20-%20Encroachment.pdf)

<sup>7</sup> [City of Berkeley, Fee Schedule for Special Event Permits](#), (ranges from \$128-\$450 per event), online:[https://www.cityofberkeley.info/Health\\_Human\\_Services/Special\\_Events\\_Permits/Street\\_Event\\_Permit.aspx#Filing\\_Fees](https://www.cityofberkeley.info/Health_Human_Services/Special_Events_Permits/Street_Event_Permit.aspx#Filing_Fees)

open to the public) won't have to offset parking revenue in the same manner that outdoor commerce will. Because existing parklets (total number = 6) have had a relatively modest impact on parking revenue to date, if their use were to have more of an impact on parking revenue the City could adjust parking meter rates to meet bond agreement commitments.

#### *Selection of Permit Type for existing permit holders - After the Emergency*

At the conclusion of the declared local emergency, current outdoor commerce permit holders will have the option to 'opt out' of the outdoor commerce program or transition their parklet, sidewalk seating, or group street event permit to a permanent outdoor installation type of their choice.<sup>8</sup> Per the ordinance modification adopted in January 2021, current outdoor commerce permit holders will have 365 days from the cessation of the declared emergency to confirm their selection. Staff will be available to provide technical assistance to existing permit holders, to determine which permit type is most appropriate for each outdoor commerce practitioner going forward.<sup>9</sup>

#### *Parklets*

Currently parklets are classified as minor encroachments and thus require a significant noticing and outreach process in order to be permitted. In June of 2020, staff recommended modifications to the Parklet Ordinance (BMC 14.48.190) and the definition of encroachment in BMC 16.18.010 so that during a declared local health emergency due to disease outbreak, parklets are defined as temporary structures in the public right-of-way and therefore can be permitted via an engineering permit, which does not require the same degree of noticing and outreach.

This section of the ordinance is now modified; so current parklet permit holders may decide to transition their permits to sidewalk seating in the right of way, should they want to continue to incorporate business operations into outdoor space in the public right of way once the emergency subsides. Or parklet permit holders can elect to pay the one-time application fee for the minor encroachment permit, and continue on as a sponsor of the parklet, without noticing the parklet installation. The parklet sponsor would commit to the standard parklet maintenance agreement, and ensure that the parklet installation is not otherwise incorporated into business operations, and affirm that "this parklet is public space" and "no-smoking" signs are posted in a visible location on the parklet. A key difference between parklets during COVID and after the public health emergency would be that the parklet could no longer be used for table service or other business operations, but instead would be designated as public space.<sup>10</sup>

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<sup>8</sup> As of March 2021, there are approximately 43 participants in the Urgency Outdoor Commerce program (13 Parklets, 21 Sidewalk Seating, 7 Street Event Permits, 2 pending/on private property).

<sup>9</sup> See: City of Berkeley, [Outdoor Commerce Guide for Business Owners](#), *Which Permit Is Right For My Business?* Page 2.

<sup>10</sup> To transition a parklet to an outdoor commerce installation where the outdoor space is incorporated into business operations is possible, the procedures to do so are described in *BMC 14.48.190, Sec 1, D, 4, b.*

Converting a parklet to permanence post-pandemic would include the following steps for an applicant:

1. Payment of the minor encroachment fee (approximately \$1,682; application fee of \$454 and \$1,228 final fee)<sup>11</sup>
2. Signing/Reaffirmation of the maintenance agreement/performance standards for caring for the parklet.
3. A new application or yellow noticing sign board or mailing **is not** required.

For new parklet applications opened after the declared local emergency, standard fees, and application noticing and mailing procedures for a minor encroachment permit for a parklet would apply. Parklets established during and before the pandemic may also be transitioned to sidewalk seating where their use is incorporated into business operations if their sponsor so chooses.

#### *Public Noticing for Parklets and Sidewalk Seating*

Pre-COVID (prior to March 2020) all pending parklet proposals were considered applications for a 'minor encroachment' were noticed in a manner similar to zoning applications. This is proposed to continue post-COVID. That is, in non-emergency times an application for a parklet is treated as a minor encroachment permit and an applicant is required to post a yellow zoning notice board at the location of the proposed parklet detailing their project plans. Per the minor encroachment permit process, Public Works staff will also post additional notices around the proposed parklet area for the public to submit in writing their response/questions/objections. In addition, the applicant is required to mail notices to property owners, occupants, and interested neighborhood groups within 300 feet of the proposed location.

The Outdoor Commerce Urgency Ordinance allowed for parklets to instead be considered as 'temporary structures in the public right of way', and therefore be permitted via an "over the counter" engineering permit, during a declared local emergency. Engineering permits do not require the 300ft mailing of notices nor a posted yellow zoning board. The Urgency Ordinance stipulates that all granted engineering permits for Berkeley parklets would sunset 90 days after the cessation of the local emergency declaration and the applicant would either (1) remove the temporary structure in the public right of way (at their own expense) or (2) apply for a minor encroachment permit to make the parklet a permanent feature of the public right of way. The January 19, 2021 ordinance extended this timeframe to 365 days after the termination of the declared local emergency.

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<sup>11</sup> City of Berkeley, Encroachment Permits, 2020, visit: [https://www.cityofberkeley.info/uploadedFiles/Online\\_Service\\_Center/Planning/Submittal%20-%20Encroachment.pdf](https://www.cityofberkeley.info/uploadedFiles/Online_Service_Center/Planning/Submittal%20-%20Encroachment.pdf) for a description of fees and required materials for submittal.

The public noticing practice for parklets would return for applications submitted post-COVID (after the state of emergency ends + 365 days), but for parklets permitted during COVID, additional public noticing would not be required. The sidewalk seating program is currently permitted via a sidewalk seating permit (a type of engineering permit), and does not require public notice.

### *Sidewalk Seating*

Prior the COVID-19 pandemic, the Sidewalk Seating Ordinance (BMC 14.48.150) allowed restaurants to obtain a permit to place and manage tables and chairs on the sidewalk immediately adjacent to their storefront. Staff is recommending the modifications adopted to BMC section 14.48.150 in June 2020 remain in the code as adopted. These include, primarily, the following:

- The removal of the word “café” and a more inclusive definition of sidewalk seating permittees to include all business establishments.
- The addition of “furniture” (matching the Parklet Ordinance definition) to allow a broader range of amenities, rather than just “tables and chairs.”
- Clarification of language relating to ADA compliance, and permit renewal.

In addition, staff recommends that council further modify BMC 14.488.150 to confirm:

- The expansion of the area where sidewalk seating can occur to include additional sections of the public right-of-way (e.g., parking lanes and travel lanes), even when there is no longer an active “declared emergency due to disease outbreak.”

New language related to the fee schedule for outdoor commerce (defined as business operations in the public right-of-way other than the sidewalk) is proposed in the attached resolution (Attachment 1) and in BMC Section *14.48.150 Sidewalk Seating*. It includes, primarily, the following:

- Extending the period of time for which outdoor commerce application and permit review fees will be waived – the granted outdoor commerce fee waivers will be extended from the current ending date of June 30, 2021; to match the conclusion of the declared local emergency, which has no identified date at this time.
- Indicating the fees for sidewalk seating in the parking lane (outdoor commerce) will be commensurate with the block face rate for parking fees at the time of renewal, and that sidewalk seating/outdoor commerce use permits will be renewable annually concurrent with the business license renewal process.

Per BMC section *14.48.150 Sidewalk Seating* the City Manager or City Council is allowed to waive permit fees in cases of demonstrated financial hardship. Public Works staff will continue to issue an administrative decision to permit or deny a specific sidewalk seating proposal based upon review of the site plan.

*Sidewalk Seating Permitting and Renewal Process*

The sidewalk seating program currently allows applicants the use of the sidewalk for one year from date of issue and is to be renewed annually. The Urgency Ordinance allows for the issuance of permits for sidewalk seating in the public right-of-way for the duration of the declared local emergency, and for 365 additional days thereafter. Following that time period, sidewalk seating outdoor commerce installations will require annual renewal at the revised fee schedule concurrent with the annual business license renewal process (typically issued in December of the preceding year and due in late February of the active year).

Annual outdoor commerce fees will be based on current parking meter rates at the time of renewal for metered parking spaces taken up by sidewalk seating. For example, a sample fee schedule for an outdoor commerce installation taking up two parking spaces in an area with parking meter rates of \$1.50 per hour, would be calculated based on 2,718 hours per year (9 hours per day, 6 days per week, 52 weeks per year, less 10 meter holiday days) is \$4,077, multiplied by 2 spaces for a total of \$8,154 per year.

By 365 days after the cessation of the declared local emergency, the sidewalk seating/outdoor commerce permit holder would either (1) cease conducting business operations in the public right of way or (2) apply for an annual sidewalk seating permit (pursuant to BMC Section 14.48.150); and pay the annual outdoor commerce use fees (if applicable if the installation is in the parking lane). A re-submittal, revised site plan, or a new application for an existing sidewalk seating permit would not be required. In addition, the application permit fee for transitioning permits will be waived.

*Street Closures and Group Outdoor Commerce Installations*

The Berkeley Street Event Permit application is used to permit all event-related street closures that are not defined as block parties; they are used for small or large events, and any other use that requires a street closure. Any person or organization from the public can apply for a street closure permit, and the cost is \$128 per block per day with an insurance coverage requirement of \$1 million. Individual businesses, the City, Business Improvement Districts, merchant associations, or other entities can continue to implement temporary or part-time street closures or “group outdoor commerce installations” via Street Event Permits. These closures would continue be reviewed via the existing special event review process that is already used for events such as the Telegraph Street Fair, outdoor concerts, and festivals. Consideration can also be given to adding retailers to existing recurring special events (such as the Farmer’s Market). The City’s published special event guide provides a detailed manual for applicants.<sup>12</sup>

**BACKGROUND**

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<sup>12</sup> City of Berkeley, *Street Event Permit Planning Guide*, online: [https://www.cityofberkeley.info/Health\\_Human\\_Services/Special\\_Events\\_Permits/Special\\_Event\\_Planning\\_Guide.aspx](https://www.cityofberkeley.info/Health_Human_Services/Special_Events_Permits/Special_Event_Planning_Guide.aspx)



On March 3, 2020, the City of Berkeley declared a state of local emergency due to coronavirus (SARS-CoV-2, or “COVID-19”), for which an effective vaccine has since been developed. Throughout 2020, the COVID-19 pandemic had a severe impact on Berkeley’s local businesses, resulting in extreme revenue losses, layoffs and, in some cases, closures.<sup>13</sup> In the early part of 2021, vaccines have become available to the general public and both the rates and incidence of disease transmission have decreased; though as of this writing indoor commerce opportunities are still restricted, and the City’s state of emergency declaration remains in effect.

#### *Outdoor Commerce Urgency Ordinance*

On June 2, 2020 the Berkeley City Council adopted the “Berkeley Safe Open Air Dining” proposal to “facilitate and expedite potential use of both public and private (parking lots, yards, setbacks, etc.) property for outdoor dining and other retail activities” and directed the City Manager “to implement or, where necessary, return to Council for approval any and all required temporary or permanent changes to, or suspensions of, Berkeley Municipal Code sections, fees, permitting requirements/timelines, and other rules and regulations.” On June 16, 2020, the Berkeley City Council passed an urgency ordinance entitled, “Outdoor Dining and Commerce in the Public Right-of-Way” which enabled businesses to expand outdoor dining and other commerce activities into the public right-of-way so businesses were able to comply with health guidelines to reduce the risk of viral transmission (i.e. outdoors) and operate with sufficient capacity to remain solvent during the duration of the current public health emergency.

#### *Path to Permanence*

On December 15, 2020 the Council referred to the City Manager “Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration” legislation requesting development of a program, and if necessary, ordinance language to facilitate the transition of temporary outdoor dining and commerce permits that were obtained under the City’s declaration of emergency to permanent status. On January 19, 2021, the Berkeley City Council passed a second ordinance on this topic “Extending Time for Temporary Parklets and Sidewalk Seating Post-COVID-19” which modified via ordinance BMC Sections *16.18 Right-of-Way Encroachments and Encroachment Permits* and *14.48.150 Sidewalk Seating, Benches, and Planters* to extend the period of time that Parklets and Sidewalk Seating established under the COVID-19 declared City emergency can remain in place to 365 days (up from the initial 90 days) after the termination of the declared City emergency.

Staff in the City Manager’s Office, Transportation, Public Works, Finance and City Attorney’s Office met on several occasions to consider process and policy improvements to enable the expansion of outdoor dining and commerce consistent with the referral from City Council. In addition, staff engaged with business owners, business

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<sup>13</sup> For a detailed look at the economic impact of the pandemic on Berkeley’s economy in 2020, see: City of Berkeley, [Office of Economic Development, Economic Dashboard & COVID-19 Impacts & Response](#), December 2020.

district leaders, and current street closure, sidewalk seating, and parklet permit applicants. This experience has informed the development of a framework for enabling outdoor commerce to continue on in a post-pandemic world (Attachments 1, 2, and 3).

*Pending State Legislation (Alcoholic Beverage Control)*

Regarding sales and consumption of alcoholic beverages in parklets, there is [current legislation](#) under consideration in the state Senate (Senate Bill 314, also known as the “[Bar and Restaurant Recovery Act](#)”) which could authorize California cities to allow restaurants to serve alcohol in outdoor spaces like parking lots, parklets, and “streeteries”, or open container entertainment zones at outdoor festivals, street fairs, and concerts where alcohol is purchased and consumed.<sup>14</sup> Passage of SB314 would not automatically implement any of these changes, but would rather give cities and counties the option of adopting them.<sup>15</sup> Prior to and during the pandemic, alcoholic beverage service is allowed at sidewalk seating installations. Should the proposed state legislation pass, the City could consider making it explicit that alcoholic beverages are permitted in parklets as well.

The goals of the both the sidewalk seating and parklet program are to maintain and enhance public space in Berkeley, enhance the economic sustainability of commercial and mixed-use districts, and create a desirable streetscape for the public to enjoy. Further, the expanded sidewalk seating and the strategic use of the existing street event closures program provide a regulatory pathway for more commercial activity to take place out of doors, improve quality of life, and enable sustainable economic recovery for local-serving businesses.

#### ENVIRONMENTAL SUSTAINABILITY

Parklets, Sidewalk Seating and Outdoor Commerce activities improve the pedestrian environment and often include bicycle parking facilities, and therefore encourage the use of multi-modal, environmentally sustainable transportation types.

#### RATIONALE FOR RECOMMENDATION

As a result of this sustained public health emergency, and part of the subsequent recovery, the City can leverage the public right-of-way to help animate key commercial corridors, and enable the production of high-quality outdoor spaces in Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

<sup>14</sup> For the full text of the proposed SB 314, see:

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB314](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB314)

<sup>15</sup> Esther Mobley, *California liquor bill aims to make restaurant parklets permanent, plus zones for open containers*, San Francisco Chronicle, February 5, 2021, Online:

<https://www.sfchronicle.com/restaurants/article/California-liquor-bill-aims-to-make-restaurant-15926255.php>

Eleanor Hollander, Acting Manager, Office of Economic Development, (510) 981-7536

Attachments:

- 1: Ordinance 14.48.190 Parklets and 16.18.010 Right of Way Encroachments and Encroachment Permits
- 2: Ordinance 14.48.150 Sidewalk Seating
- 3: Resolution: Revised Fee Schedule for Parklets, Sidewalk Seating and Special Event Street Closure Application(s).
- 4: *Impacts on Meter Revenue*, presented at the Berkeley City Council *Facilities, Infrastructure, Transportation, Environment & Sustainability* (FITES) Policy Committee meeting, [November 2, 2020](#).

ORDINANCE NO. #,###-N.S.

AMENDING CHAPTER 14.48 MISCELLANEOUS USE OF STREETS AND SIDEWALKS  
OF THE BERKELEY MUNICIPAL CODE SECTION 14.48.190 PARKLETS AND  
AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND  
ENCROACHMENT PERMITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 14.48.190 is amended to read as follows:

**14.48.190 Parklets**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right of way- (excluding Sidewalks alone, which are subject to and governed by Section 14.48.200) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.
2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.
3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.
2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.
3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.
4. "Parklet" means a platform or similar level surface extending into the public right of way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or

fence. [Platforms that meet this definition but have received a Sidewalk Seating Permit pursuant to BMC Section 14.48.150 shall not be considered Parklets.](#)

5. "Planter" means a container that is designed or used for growing plants.
6. "Sidewalk" has the same meaning as set forth in Section 1.04.010(18).
7. "Sponsoring Business", "Host", "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.
8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.
2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.
3. Objects permitted under this Section shall not:
  - a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
  - b. Block or obstruct the view of necessary authorized traffic devices;
  - c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
  - d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate;
  - e. Be affixed to any City or utility company-owned poles or appurtenances;
  - f. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate.

4. All Parklets shall be subject to the following additional standards and requirements:

- a. Parklets must remain publicly accessible and must include signage posted on site to this effect;
- b. Parklet construction materials must be of high quality, durable, and suitable for public use;
- c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;
- d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;
- e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;
- f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade;

5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:

- a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;
- b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;
- c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff;

D. All permits issued under this Section shall be subject to the following conditions:

1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.

3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or his or her designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under the Section, when under review prior to issuance shall be posted in plain view within the sponsoring establishment(s) for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code. Section D (4) is not applicable in cases of declared local emergency due to disease outbreak. Upon termination of a declared local emergency due to disease outbreak within 365 days, a permittee must:

a. pay the permit fee for a minor encroachment and comply with all the requirements of this Section and Section 16.18.060, except that public notice requirements shall not be required; or

b. apply for a Sidewalk Seating Permit pursuant to BMC Section 14.48.150, and pay initial annual outdoor commerce use fee (the application permit fee for transitioning permits will be waived); or

c. remove the Parklet from the public right-of-way.

5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee's installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than \$1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or their designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations.

Section D (9) is not applicable in cases of declared local emergency due to disease outbreak.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish or waive fees and guidelines for the implementation and administration of this Section.

Section 2. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:

**16.18.010 Definitions.**

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;
2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable;

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade Improvements identified in chapters 16.04, 16.24 and 17.16, and. any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee;



flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.190; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment. During a declared City emergency in response to a disease outbreak, a Parklet shall be considered a temporary structure not subject to the encroachment permit requirement and shall be permitted with an engineering permit. ~~Upon termination of the declared City emergency, any Parklet present in the public right-of-way shall within (365) days of date of termination either obtain a valid encroachment permit pursuant to 14.48.190.D.4 or be removed from the public right-of-way.~~

E. "Assistant City Manager for Public Works" includes the ~~Assistant~~ Deputy City Manager, Public Works Director and/or his/her authorized delegate.

F. "Permittee" means any person(s) firm, company, corporation, association, public agency, public utility, or organization and the permittee's successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors in interest of the original permittee and subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit. (Ord. 7301-NS § 1, 2013; Ord. 6998-NS, 09/18/07: Ord. 5514-NS § 1, 1983)

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. #,###-N.S.

AMENDING CHAPTER 14.48 MISCELLANEOUS USE OF STREETS AND SIDEWALKS  
OF THE BERKELEY MUNICIPAL CODE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Findings.

The Council of the City of Berkeley hereby finds and determines as follows:

A. During the declared local emergency due to the COVID-19 pandemic, the City permitted Sidewalk Seating in all parts of the public right-of-way in order to allow businesses to survive while also maintaining appropriate social distancing measures.

B. Following the termination of the local emergency, the City desires to continue allowing Sidewalk Seating in all parts of the public right-of-way, subject to conditions set forth in BMC 14.48.150.

C. The City expects that such outdoor commerce will result in a decrease in parking meter revenues, as parking spaces will be used for business operations rather than parking.

D. The City is obligated to maintain revenue from operation of its off-street parking enterprise and its parking meter enterprise sufficient to meet rate covenants in the Installment Sale Agreement, dated as of August 1, 2016 related to the \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016.

E. In order to maintain sufficient parking meter revenue, the amended Berkeley Municipal Code Section 14.48.150 implements a new Outdoor Commerce Use Fee which shall be equivalent to the expected block face parking revenue from the parking spaces used by the Sidewalk Seating permittee, and shall be treated as Parking Meter Fund revenue.

F. By charging the Sidewalk Seating permittee the equivalent of the parking meter rate for the use of parking spaces, the Outdoor Commerce Use Fee is no more than necessary to cover the costs to the City of providing parking spaces for outdoor commerce, and bears a fair and reasonable relationship to the benefit received by the Sidewalk Seating permittee.

Section 1. That Berkeley Municipal Code Section 14.48.150 is amended to read as follows:

**14.48.150 Sidewalk seating, benches and planters.**

A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Sidewalk Seating, Benches and/or Planters on sidewalks, parking lanes, street areas, and other public right of way locations as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any sidewalk area in front of a single parcel if there are any current violations of this Chapter in that sidewalk area.

2. A permit for Sidewalk Seating, Benches and/or Planters may not be issued unless the business for which the Sidewalk Seating, Benches and/or Planters is/are proposed is in full compliance with Title 23 and any Permit issued thereunder.

3. Sidewalk Seating and Outdoor Commerce shall require a Sidewalk Seating engineering permit, renewed annually.

4. Businesses conducting Outdoor Commerce in a parking lane shall additionally pay an annual Outdoor Commerce Use Fee in exchange for using public parking spaces for business operations.

5. Sidewalk Seating shall be permitted in any area of the public right-of-way if City Staff makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate.

6. Upon termination of any declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within (365) days of date of termination either obtain a valid Sidewalk Seating Engineering Permit and pay the Outdoor Commerce Use Fee or be removed from the public right-of-way.

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

2. "Block Face" means one side of one block, e.g., the north side of Center Street between Milvia Street and Shattuck Avenue.

23. "Bus Bench" means a bench installed and maintained under an agreement between the City, A.C. Transit and Lamar Transit Advertising or another public or semi-public transit provider.

34. "Commercial Establishment" means, but is not limited to, a place where Business Activity is established. Business activity is defined as any activity subject to BMC Chapter 9.04 and any economic activity which generates receipts but is exempt from BMC Chapter 9.04 by state or federal law.

45. "District-wide Sidewalk Bench/Planter Area Plan" means a City-approved plan for a specific commercial district as defined in said plan that establishes area-specific regulations for benches, planters and/or plant material, and establishes general regulations for the placement of benches and planters in the public right-of-way, for the designated district.

56. "District-wide Sidewalk Seating Area Plan" means a City-approved plan for a specific commercial district as defined in said plan that establishes area-specific regulations for sidewalk seating, and establishes general regulations for the placement of sidewalk seating in the public right-of-way, for the designated district.

67. "Food Service Establishment" has the same meaning as set forth in BMC Chapter 23F.04.

78. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of sidewalk, parking lanes, street area, and other public right of way spaces.

9. "Outdoor Commerce" means Sidewalk Seating in the public right of way.

10. "Outdoor Commerce Use Fee" means an annual fee for the use of the parking lane for Sidewalk Seating.

~~6.~~ 11. "Planter" means a container that is designed or used for growing plants.

912. "Parking Lane" and "Street Area" are considered to be part of the Public right-of-way (PROW), known as, "any public street, public way, public place or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof, and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City and any privately-owned area within City's jurisdiction which is not yet, but is designated as a proposed public place on a tentative subdivision map approved by City." as defined in BMC 23F.04.010.

~~7.~~ 13. "Sidewalk" has the same meaning as set forth in BMC 1.04.010(18).

14. "Sidewalk Seating" means tables and/or chairs (including benches) and, umbrellas and other associated furniture with lawfully operating Food Service Establishments or other commercial establishments, in or on the sidewalk.

~~During cases of a declared City emergency in response to a disease outbreak,~~  
"Sidewalk Seating" includes seating and associated furniture in the public right-of-way or resting on, or projecting into, the sidewalk, parking lane, or street area, or any combination thereof which are not physically or structurally attached to a building, retaining wall or fence. ~~Such Sidewalk Seating shall be permitted in any area of the public right-of-way for the duration of the declared City emergency if Traffic Engineer makes a finding that the use of the right-of-way for Sidewalk Seating purposes does not create a dangerous condition for customers, pedestrians, or bicycle or motor vehicle traffic. Upon termination of the declared City emergency, any Sidewalk Seating present in the public right-of-way and not on the sidewalk shall within 365 days of date of termination either obtain and valid encroachment permit or be removed from the public right-of-way.~~

~~12~~15. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

~~10.~~ 16. "Window Box Planter" means a box, designed to hold soil for growing plants, attached at or on a windowsill.

C. Sidewalk Seating, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum horizontal clear space of six feet for ADA-compliant path of travel, (or reduce to 5 feet at a single point of contact) or such greater (or smaller) amount of clear space as the Engineering Division finds necessary to protect and enhance pedestrian and vehicle traffic for public use in the sidewalk area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Objects permitted under this Section shall not:

a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;

b. Block or obstruct the view of necessary authorized traffic devices;

c. Unduly interfere with pedestrian traffic in the public ROW/sidewalk, pedestrian safety, access to public or private parking, traffic circulation, and/or vehicular safety;

d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, Sidewalk Seating, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshal as appropriate;

e. Be affixed to any City or utility company-owned poles or appurtenances;

3. All sidewalk seating shall be subject to the following additional standards and requirements:

a. All Sidewalk Seating configurations shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

b. All Sidewalk Seating components shall be stored in a secure location ~~on private property~~ when not in use.

- c. The permittee shall regularly inspect and clean the Sidewalk Seating and that portion of the public sidewalk adjacent to the establishment. A waste receptacle shall be provided.
4. All benches and planters shall be subject to the following additional standards and requirements:
  - a. All proposals shall comply to the greatest extent possible with any design requirements adopted by the City for benches, planters and/or plant material.
- D. All permits issued under this Section shall be subject to the following conditions:
  1. The permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the curb, parking lane, or street area.
  2. The permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, and ensure compliance with all applicable laws, and the number of tables and chairs shall not be increased without prior approval of the Public Works or Public Health Department.
  3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or their designee, be removed or relocated in such a way as to eliminate the conflict. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Section.
  4. Permits issued under the Section shall be posted in plain view within the commercial establishment for which the permit has been issued along with any other relevant permits that support health and safety of patrons and the general public.

5. By accepting a permit under this Section, the permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance or removal of Sidewalk Seating, Furniture, Benches and/or Planters.

6. Prior to permit approval, the permittee shall demonstrate possession of liability insurance in the amount of \$1,000,000 for Benches and Planters, and related Sidewalk Seating furniture. Said insurance shall name the City of Berkeley as additionally insured and shall be in a form acceptable to the City Attorney.

7. The permittee shall monitor and control the use of the Sidewalk Seating so as to prevent disturbance of the surrounding neighborhood.

8. A food service establishment that proposes to serve alcoholic beverages within an outdoor dining area shall comply with the standards established by the State of California Department of Alcoholic Beverage Control. The dining area shall be:

- a. Physically defined and clearly part of the [commercial establishment](#) ~~restaurant~~ it serves; and
- b. Supervised by a [commercial establishment](#) ~~restaurant~~ employee to ensure compliance with laws regarding the on-site consumption of alcoholic beverages.

E. Permits under this Section are not transferable, and must be renewed annually.

F. Sidewalk Seating, Benches, Furniture, and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

G. The City Council may by resolution establish or waive fees for the implementation and administration of this Section. [Outdoor Commerce Use Fees shall be equivalent to the expected block face parking revenue from the parking spaces used by the permittee, and shall be treated as Parking Meter Fund revenue.](#) (Ord. 7632-NS § 1 (part), 2018; Ord. 7468-NS § 1, 2016; Ord. 7401-NS § 1, 2015; Ord. 7203-NS § 2, 2011; Ord. 6281-NS § 5, 1995. Formerly 14.48.200)



Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be published in a newspaper of general circulation.

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO WAIVE APPLICATION AND PERMIT FEES DURING A DECLARED LOCAL EMERGENCY FOR APPLICATIONS TO THE SIDEWALK SEATING, PARKLET, AND STREET EVENT PERMIT PROGRAMS AND FURTHER AUTHORIZING THE CITY MANAGER TO LEVY FEES FOR THESE PROGRAMS AT THE CONCLUSION OF A DECLARED LOCAL EMERGENCY.

WHEREAS, on June 16, 2020, the Council of the City of Berkeley adopted Urgency Ordinances Nos. [REDACTED]-N.S. and [REDACTED]-N.S, establishing Parklets and Sidewalk Seating as an approvable temporary use in the public right-of-way; and

WHEREAS, the Ordinances, codified in Berkeley Municipal Code Chapters 14.48.190 (defined in Chapter 16.18.010) and 14.48.150 (defined in Chapter 23F.04.010), establish regulations for parklets and sidewalk seating in the public right-of-way during a declared local emergency; and

WHEREAS, the Ordinances, codified in Berkeley Municipal Code Chapters 14.48.190 (defined in Chapter 16.18.010) and 14.48.150 (defined in Chapter 23F.04.010), also establish regulations for parklets and sidewalk seating in the public right-of-way after the declared local emergency lapses or is rescinded; and

WHEREAS, the adopted ordinances establish procedures, conditions and a fee structure for engaging in outdoor commerce in the public right of way at the conclusion of a local emergency; and

WHEREAS, these Procedures and Conditions empower the City Council to waive permit fees, for the permitting and review of parklets, sidewalk seating and street closure event permits in the public-right-of-way during a state of declared local emergency; and

WHEREAS, the Council of the City of Berkeley declared a state of local emergency on March 3, 2020 due to the global pandemic caused by spread of COVID-19;

WHEREAS, when the local emergency has ended, the City will continue to allow outdoor commerce to take place in the public right of way, including in areas otherwise used for parking; and

WHEREAS, the City is required to maintain sufficient parking meter revenue to meet commitments in the Installment Sale Agreement, dated as of August 1, 2016 related to the \$33,970,000 Berkeley Joint Powers Financing Authority Parking Revenue Bonds, Series 2016 ("Bond Agreement");

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to waive fees associated with the permitting and inspection of these programs until the local state of emergency lapses or is revoked.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to levy fees associated with the permitting and inspection of these programs when the local state of emergency lapses or is revoked.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to levy fees associated with the use of the public right of way for these programs when the local state of emergency lapses or is revoked.

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that the fee structure for sidewalk seating in the public right-of-way other than the sidewalk shall compensate the Parking Meter Revenue Fund for purposes of meeting the rate covenants in the City's Bond Agreement.

**Attachment 4:** Impacts on Meter Revenue, Berkeley City Council Facilities, Infrastructure, Transportation, Environment & Sustainability (FITES) Policy Committee meeting, November 2, 2020

**From:** Javandel, Farid  
**Sent:** Wednesday, November 4, 2020 2:53 PM  
**To:** MacDonald, Michael  
**Subject:** Re: Cost of parklet fees

Michael,

The FITES subcommittee asked for the value of the waived parklet application and permit fees. The answer is that we have issued permits with \$71,000 in waived fees so far and have additional permits pending which will bring us to a total of \$138,000 in waived fees. If a temporary parklet opts to become permanent after the pandemic, it will require an encroachment permit, which costs about \$1,700. We have not required encroachment permits for the temporary parklets during the pandemic.

There was also a question about the current revenue and potential revenue per parking space as a basis for potential future lease price of parking spaces for dedicated use by businesses. The information in the table below summarizes the annual average revenue for spaces in each area based on revenue on or before February 2020. The revenues provided are the average actual revenues per meter in each of the specified zones. Actual revenues are typically less than potential revenues because of both vacant spaces and unpaid meter use by disabled placard holders who are exempt from paying or by other people who park without paying or stay for longer than the payment on the meter. There are also vacant spaces. However, in goBerkeley zones like downtown the meter prices are adjusted to keep occupancy between 65% and 85%, which does not account for the actual revenue being 42.6% of potential at the single space meters and 33% at multispace meters. Clearly underpayment of occupied parking spaces plays a big role in the discrepancy between actual and potential revenues even if the cars occupying those spaces belong to patrons or employees of businesses who rely on the availability of those parking spaces.

Best Regards,  
 Farid

Financial Zone/Area	Annual Revenue per space	Annual Potential Revenue per space
Elmwood Multi Space	\$4,502.67	\$7,499.25
Main GoBerkeley 2 Hr Single Space Meter	\$4,645.92	\$10,908.00
Main GoBerkeley 2 Hr Multi Space	\$3,613.67	\$10,908.00
Main GoBerkeley 8 Hr (Value) meters	\$4,646.46	\$5,454.00
2300 Shattuck	\$5,133.44	\$10,908.00
Main North Berkeley Single Space	\$2,496.91	\$5,454.00
Main North Berkeley Multi Space	\$2,889.88	\$5,454.00
Solano Multi Space Meters	\$1,778.79	\$4,090.50
University/San Pablo Single Space Meters	\$932.87	\$4,090.50
University San Pablo Multi Space Meters	\$533.11	\$4,090.50
1800 Fourth Street	\$2,742.96	\$4,090.50

## Impacts of Parklets on Parking Meter Revenue

Meter Area	# of Parklets	Total Spaces	Annual Revenue Loss	
			Actual*	Potential**
4th Street	3	7	\$19,200.75	\$28,633.50
Downtown	6	21	\$78,983.78	\$229,068.00
Elmwood	3	6	\$27,016.00	\$44,995.50
North Berkeley	6	22	\$60,433.59	\$119,988.00
Solano	3	8	\$14,230.33	\$32,724.00
	<b>21</b>	<b>64</b>	<b>\$199,864.46</b>	<b>\$455,409.00</b>

\*Calculated using February 2020 revenue data

*Revenue shown is average of meter financial area. 4th St. specific to 1800 block of 4th Street.*

\*\*Potential revenue assumes metered spaces are paid from 9am-6pm, Monday-Saturday, holidays excepted, at Feb. 2020 hourly rates.