



Lori Droste  
Councilmember District 8

Consent Calendar  
December 15, 2020

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Lori Droste, Mayor Jesse Arreguin, Councilmember Rigel Robinson, Councilmember Kate Harrison  
**Subject:** Path to Permanence for Outdoor Dining and Commerce Permits Granted Under COVID-19 Public Health Emergency Declaration

### **Recommendation**

Refer to the City Manager to develop 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. Consider criteria for transitioning spaces for public vs. private outdoor use:

- Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces
- Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.
- Consider *merchant opt-out vs. opt-in*: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.
- Consider *fees and potential fee waivers for temporary spaces transitioning to permanent status*: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits.

- *Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible.*
- *Request the Agenda Committee consider sharing this item on Berkeley Considers.*
- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

#### POLICY COMMITTEE RECOMMENDATION

On November 2, 2020 the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee adopted the following action: M/S/C (Robinson/Hahn) to send the item with a positive recommendation to the City Council with the recommendation language as amended by the committee.

The revised recommendation language includes:

Refer to the City Manager to develop 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. - Consider criteria for transitioning spaces for Public vs. Private outdoor use. - Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces. - Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors. - Consider Merchant opt-out vs. opt-in: To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders might automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, or the City might reach out to temporary permit holders and offer an opt-in or quick transition program. - Consider Fees and potential Fee waivers for temporary spaces transitioning to permanent status: Fees associated with the minor encroachment permits or sidewalk seating typically necessary for outdoor dining and commerce permits could be waived for all transitioning permits. - Consider Protocols for transfer of private use parklets if businesses change, turn over, etc. - Consider and bring forward any and all suggestions to help transition temporary spaces to permanent with as few hurdles and costs possible. - Request the Agenda Committee consider sharing this item on Berkeley Considers.

Vote: Ayes - Hahn, Robinson; Noes – Davila; Abstain – None; Absent - Harrison

#### Background

Since the parklet pilot program began in 2013, the City of Berkeley has explored the use of parklets to improve the pedestrian environment, support commercial areas, and re-

envision public spaces. By 2018, the City had six parklets and City Council adopted a parklets ordinance to make the program permanent.<sup>1</sup>

With the rise of COVID-19, the City has adopted new public health orders to protect the safety of residents by mandating social distancing protocols and new rules around indoor dining, recreation, and gatherings. Parklets have emerged as a safe way for restaurants to allow patrons to eat outside with ample space in between diners. Salons and gyms have utilized parklets to move services outside. Currently, 29 businesses have applied for outdoor commerce permits (which includes both sidewalk seating and parklets) with 13 of those applications for parklets.

To support businesses as quickly as possible, the City passed an urgency ordinance<sup>2</sup> to establish outdoor dining and commerce in the public right of way. As currently written, the simplified application process as well as the permit for outdoor dining and commerce will last as long as the City's declaration of emergency. The fee waiver associated with this ordinance lasts up to one year (as of June 2020).

When the City's declaration of emergency ends, these permits and the outdoor dining and commerce structures in the public right of way will expire.

Information on the safety protocols, insurance requirements, and specific types of outdoor dining and commerce permits can be found on the OED materials in Attachment 1.

### **Financial Implications**

The installation of parklets may result in a slight reduction in parking revenues over time. Transportation staff have provided the following table to reflect the lost parking revenue associated with parklets. Because meter costs vary throughout the City, different commercial areas have different revenue projections.

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<sup>1</sup> [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/05\\_May/Documents/2018-05-15\\_Item\\_08\\_Establishment\\_of\\_the\\_Parklet.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/05_May/Documents/2018-05-15_Item_08_Establishment_of_the_Parklet.aspx)

<sup>2</sup> <https://www.cityofberkeley.info/uploadedFiles/Clerk/Urgency%20Item%20Outdoor%20Commerce.pdf>

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 | *I*  
 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.

**Contact**

Councilmember Lori Droste, District 8, 510-981-7180

Attachment 1:

[https://www.cityofberkeley.info/uploadedFiles/Health\\_Human\\_Services/Public\\_Health/covid19/Aug20\\_OED\\_OutdoorCommerceGuide.pdf](https://www.cityofberkeley.info/uploadedFiles/Health_Human_Services/Public_Health/covid19/Aug20_OED_OutdoorCommerceGuide.pdf)



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### Recommendation

Refer to the City Manager ~~and the Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee~~ to develop **a program, and if necessary**, ordinance language to **facilitate the transition of** ~~make the~~ temporary outdoor dining and commerce permits that were obtained under the City's declaration of emergency to ~~become~~ permanent **status. Consider criteria for transitioning spaces for public vs. private outdoor use.** ~~Ordinance language should include:~~

- **Consider the structural, materials, safety and other criteria for temporary vs. permanent outdoor spaces**
- **Consider costs and benefits of private outdoor spaces adjacent to specific businesses on customer access, parking availability, parking revenues, and all other factors.**
- **Consider *merchant opt-out vs. opt-in*:** To encourage and support the use of outdoor commerce, upon the conclusion of the City declaration of emergency, outdoor commerce permit holders ~~should~~ **might** automatically be transitioned to permanent permit status unless the permit holder chooses to remove the installation, **or the city might reach out to temporary permit holders and offer an opt-in or quick transition program.**
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sidewalk seating typically necessary for outdoor dining and commerce permits ~~sh~~ could be waived for all transitioning permits.

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- *Consider removing the prohibition of parklets on State Highways (Ashby Ave, San Pablo Ave., for example)*

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