

ORDINANCE NO. _____ (2022 SERIES)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING TITLE 5 (LICENSES, PERMITS, REGULATIONS) OF THE MUNICIPAL CODE TO AMEND CHAPTER 5.50 (SIDEWALK CAFES) AND ADD CHAPTER 5.51 (PARKLETS)

WHEREAS, parklets were part of Open SLO, a pilot program to expand the use of city streets and public spaces to help the economic recovery of local businesses and provide additional opportunities for physical distancing within the community due to the COVID-19 pandemic; and

WHEREAS, goals promoting parklets as a way to create public spaces and a vibrant pedestrian environment are established in the Active Transportation Plan; and

WHEREAS, the City Council of the City of San Luis Obispo conducted a study session on July 21, 2021 and provided input to staff to develop a permanent parklet program for its review and approval; and

WHEREAS, the Active Transportation Committee reviewed and provided comments on the proposed parklet design guidelines in the City of San Luis Obispo Outdoor Dining Guide within their purview of bicycle and pedestrian transportation at a public hearing on May 19, 2022; and

WHEREAS, the Outdoor Dining Guide (“Guide”) includes information on the permanent parklet program including the approval process, eligibility, design guidelines, and operational requirements, and public input on the Guide was gathered including at a public workshop, Open City Hall webpage, meetings with the Chamber of Commerce and Downtown SLO; and

WHEREAS, a parklet program has similarities with the existing Sidewalk Café program and it is necessary to make amendments to the sidewalk café program to better align the two programs; and

WHEREAS, the City Council of the City of San Luis Obispo conducted a public hearing on July 5, 2022, for the purpose of considering an amendment to Title 5 (Licenses, Permits, Regulations) of the Municipal Code to amend Chapter 5.50 (Sidewalk Cafes) and add Chapter 5.51 (Parklets); and

WHEREAS, the City Council finds that the proposed amendment is consistent with the General Plan, Zoning Regulations, and other applicable City goals and policies as amended; and

WHEREAS, notices of said public hearings were made at the time and in the manner required by law; and

WHEREAS, the City Council has duly considered all evidence, including the testimony of interested parties, and the evaluation and recommendations by staff, presented at said hearing.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Incorporation of Recitals. The City Council finds that the foregoing recitals and administrative report presented with this ordinance are true and correct and are incorporated in the ordinance by this reference and adopted as the findings of the City Council.

SECTION 2. Environmental Determination. The proposed amendments to the Municipal Code Title 5 has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the state CEQA Guidelines, and the environmental regulations of the City. Specifically, the proposed amendment has been determined to be categorically exempt per CEQA Guidelines Section 15061(b)(2) and CEQA Guidelines Section 15301 (c) (Existing Facilities) because the actions are limited to permitting, leasing, and minor alteration of existing public facilities within the right of way of the program area. The new use of the right of way under the program by additional parklets or sidewalk dining is negligible when compared to the total linear square footage of the program area. In addition, any new use is permissible under Section 15301 (c) as it does not result in the addition of any automobile lanes. In addition, the new use is also permissible under Section 15301 (e) given the temporary expansion to an existing structure.

SECTION 3. Action. Chapter 5.50 (Sidewalk Cafes) of the San Luis Obispo Municipal Code is hereby amended and superseded to the extent inconsistent herewith.

5.50.015 Permits required.

- A. A sidewalk cafe permit allows outdoor dining service in the public right-of-way, including the placement of chairs, tables, awnings, and umbrellas. A removable barrier between the path of travel and the outdoor dining area shall be required. Applications for a revocable permit for sidewalk cafes shall be made to the community development department.
- B. A table and chairs permit allows for the temporary placement of chairs and tables on the sidewalk in conjunction with a restaurant or other food/beverage service ~~where seating for no more than six people are placed on the sidewalk~~. No barriers or other fixed items are allowed on the sidewalk. Alcoholic beverages shall not be allowed. All items must be removed at close of business. Applications for a revocable permit for a table and chairs permit shall be made to the community development department and shall be valid for one year from date of issuance.
- C. An encroachment permit ~~may~~ shall be required pursuant to Chapter [12.04](#).

5.50.020 ~~Architectural~~ Development review.

At the community development director's discretion, ~~architectural~~ development review may be required pursuant to Chapter ~~2.48~~ 17.106

5.50.025 Application content.

Applications shall be made jointly by the business operator requesting use of a sidewalk area for outdoor dining and the property owner(s) of the building in which the business is located. Such application shall be accompanied by:

- A. Signed consent of business owner(s) and property owner(s);
- B. Proof of liability insurance, meeting city standards, which names the city as additionally insured for the term of the permit to the approval of the city risk manager;
- C. A liability release agreement wherein the recipient(s) of the permit agrees to defend and hold the city harmless from claims or liability arising from the operation of such sidewalk cafe;
- D. A detailed site plan, drawn to scale, noting dimensions of the area proposed for outdoor dining; the proposed number and location of tables, chairs and other furnishings to be included in the dining area; the relationship of the outdoor dining area to the indoor dining area; and all sidewalk obstructions in the vicinity;
- E. A detailed description of the type, color, and material of all proposed outdoor furniture, such as tables, chairs, barriers, planters, umbrellas, signs, and lighting;
- F. An explanation of how any required additional parking will be provided;
- G. A statement of proposed hours of operation; and any other information deemed necessary by the community development or public works directors.

5.50.030 Fees.

- A. *Sidewalk Cafe*. In addition to application fees for administrative approval, the applicant(s) shall pay an annual sidewalk use fee. Encroachment permit fees shall be waived for the sidewalk cafe installation unless public improvements are proposed. If the sidewalk dining installation includes physical changes to an existing building, fees for ~~architectural~~ development review may be required. If improvements are proposed to the existing sidewalk, including widening, sidewalk repaving, or any demolition or relocation of public property, an encroachment permit and associated public works inspection fees shall apply. Additional parking spaces or in-lieu fees for parking may be required. Fees shall be as adopted by resolution of the city council.

- B. *Tables and Chairs Permit.* The applicant(s) shall pay an annual tables and chairs use fee. Additional parking spaces or in-lieu fees for parking may be required. Fees shall be as adopted by resolution of the city council. ~~Permits are subject to application fees for administrative approval. Permits shall only be valid for one year and must be renewed annually subject to an additional administrative application. Annual sidewalk use fees shall not apply.~~ Encroachment permit fees shall be waived unless public improvements, such as sidewalk widening or other public improvements are proposed.

5.50.035 Review procedures.

Public noticing and review procedures shall be the same as those required for an administrative review approval.

5.50.040 Eligible sites.

Outdoor dining or the placement of tables and chairs must be within the frontage of an existing or proposed restaurant, coffee shop, or bakery approved for on-premises seating and accessory to the operation of that restaurant.

5.50.45 Required design standards.

Sidewalk cafes and table and chairs permits must conform to the design standards set forth in Chapter 3, Design Guidelines, of the Outdoor Dining Guide as adopted by Resolution No. XXXXX (2022 Series).

5.50.045 5.50.50 Required operational standards.

Sidewalk cafes and table and chairs permits must conform to the operational standards set forth in Chapter 4, Operating Requirements for Outdoor Dining, of the Outdoor Dining Guide as adopted by Resolution No. XXXXX (2022 Series).

~~A. *Alcoholic Beverage Restrictions.* Establishments that serve alcohol must obtain any additional permits required by the Alcoholic Beverage Control Board of the state of California.~~

~~B. Hours of operation shall not begin prior to seven a.m. nor extend later than ten p.m.~~

~~C. Parking shall be provided as required for restaurants in the zoning regulations. Expansion of dining areas within the public right-of-way frontage shall not normally trigger additional parking; however, the city reserves the right to require additional parking or in-lieu fees in instances where significant parking impacts to the public supply may occur. On-site bicycle parking may be required in lieu of vehicle parking spaces.~~

~~D. A path of travel for pedestrians shall be maintained free and clear of any existing obstacles (street furniture, utilities, etc.) to the satisfaction of the public works and~~

~~community development directors. Such clear pathway shall link with pathways on each side of the property and shall generally allow a six-foot clear space. For new sidewalk construction, the pathway should generally be eight feet.~~

~~E. Movable barriers are required to delineate outdoor dining areas except under the approval of a tables and chairs permit where no alcoholic beverages are served.~~

~~F. Movable barriers shall be designed and attached to the sidewalk in a manner approved by the public works director and may be subject to additional criteria as prescribed by the State Alcoholic Beverage Control Board.~~

~~G. Where umbrellas or awnings are used, a vertical clearance of at least seven feet must be maintained. The placement, color, style, and types of outdoor furniture and barriers shall be consistent with and complement the design and appearance of the affected building to the satisfaction of the community development director.~~

~~H. Items used within the outdoor dining areas may not be left outdoors overnight or when not in use.~~

~~I. Outdoor dining facilities shall be confined to the area shown on an approved site plan exhibit and shall not interfere with building egress to the satisfaction of the chief building official and the fire marshal.~~

~~J. Outdoor dining areas shall be used for sit-down food and beverage service only. No stand-up or take-out service is permitted in the outdoor dining area.~~

~~K. The outdoor dining area must be maintained in a clean and safe condition at all times with appropriate provisions for trash disposal and recycling.~~

~~L. The operation must meet all required county health department standards, obtain any necessary permits and service to the areas shall be conducted in a safe manner at all times.~~

~~M. The permit issued shall not be transferable in any manner.~~

~~N. The outdoor dining operation shall in no way interfere with access to utilities.~~

~~O. Smoking shall be prohibited in the outdoor dining area.~~

~~P. Table and chairs permits are subject to the following additional criteria:~~

~~1. No alcoholic beverages may be served or consumed.~~

~~2. No more than three tables, with a maximum of two chairs per table, may be placed on the sidewalk. All items must be removed from the sidewalk at close of business.~~

~~3. No barriers, fixed or movable, may be installed.~~

~~4. Annual sidewalk fees shall not apply.~~

~~5. Tables and chairs may be restricted for use by customers only.~~

~~5.50.050~~ 5.50.55 Terms and expiration.

- A. A sidewalk cafe or table and chairs permit will be for an unlimited term, unless a limited or probationary term is deemed appropriate by the community development director where potential conflicts with other uses require operational evaluation. The permit shall automatically expire upon expiration of the business tax certificate or upon failure to pay the required annual ~~sidewalk~~ use fee. Operators wishing to renew an expired permit shall submit a new application with appropriate fees.

Permits may be transferred to new business owners at the same property location, subject to city approval of a new application reflecting new ownership.

~~B. A table and chairs permit is valid for one year and may be renewed on an annual basis subject to payment of fees for an administrative review approval application.~~

~~5.50.055~~ 5.50.60 Grounds for denial of permit.

The community development director shall deny the sidewalk cafe permit or table and chairs permit if the operation will not meet provisions of this chapter or will otherwise create unresolvable conflicts with public facilities.

~~5.50.060~~ 5.50.65 Revocation or suspension of permit.

- A. The city retains the right to revoke or suspend the permit upon twenty-four hours' written notice to the sidewalk cafe operator for any cause, regardless of conformance with these provisions. Situations that may merit suspension or revocation include, but are not limited to:
 - 1. Emergencies, parades, necessary construction or maintenance, at the discretion of the public works director;
 - 2. Suspension, revocation, or cancellation of any necessary health permit(s);
 - 3. Incorrect or inadequate insurance coverage; or
 - 4. Failure to comply with conditions of permit approval.
- B. Within twenty-four hours of receipt of written notice of revocation or suspension, regardless of any appeal of the action, the operation shall cease, and the sidewalk cafe operator shall restore the sidewalk to the condition existing prior to the placement of outdoor dining facilities or to some other condition acceptable to the public works director.
- C. The city retains the right to immediately revoke, suspend or modify the permit if:
 - 1. Under a state of emergency, the sidewalk use may affect the health, safety or welfare of the general public as determined by the public works director, police chief or fire chief;
 - 2. Failure to comply with certain conditions of the permit for sidewalk use is determined to constitute a health, safety or welfare hazard to the general public as determined by the public works director, police chief or fire chief.
- D. If pursuant to the above requirements, sidewalks are not restored to order in the time specified by the city, the city may remove any and all facilities installed within the right-of-way. Reimbursement of city costs for said removal shall be the responsibility of the sidewalk permit holder.

~~5.50.065~~ 5.50.70 Appeals.

Decisions of the community development director to approve, deny, revoke or suspend a sidewalk cafe permit, or a table and chairs permit, may be appealed to the planning commission for final decision. ~~city council subject to the provisions of Chapter 1.20~~

SECTION 4. Chapter 5.51 (Parklets) of Title 5 (Licenses, Permits, and Regulations) the San Luis Obispo Municipal Code, is hereby added to read as follows:

5.51.010 Intent.

This chapter is intended to provide opportunities for properly licensed and permitted restaurants, coffee shops, and bakeries to offer outdoor dining in parklets, in a manner compatible with pedestrian traffic and surrounding uses, in commercial zones where such uses are allowed; it is also intended to provide opportunities for properly licensed and permitted non-profit and community groups to offer public use of parklets, in a manner compatible with pedestrian traffic and surrounding uses.

5.51.015 Definitions.

“Parklet” shall mean a reclaimed area of the public right of way of portions of street parking for pedestrian uses that includes a small seating or community gathering area or bicycle parking area temporarily constructed over street parking space(s).

5.51.020 Permits required.

- A. A parklet permit allows outdoor dining service in the public right-of-way, including the placement of curb extension structures, barriers, chairs, tables, and umbrellas. A removable parklet structure providing a separation between parklet users and street traffic shall be required. Parklet permits are revocable and applications for parklet permits shall be made to the community development department.
- B. An encroachment permit shall be required pursuant to Chapter 12.04.

5.51.025 Development review.

At the community development director’s discretion, development review may be required pursuant to Chapter 17.106. Permits for parklets requiring the removal of parking shall be approved, denied, or revoked by the community development director.

5.51.030 Application content.

Applications for parklets shall be made jointly by the business operator requesting use of a parking space(s) for outdoor dining and the property owner(s) of the building in which the business is located. Such application shall be accompanied by:

- A. Signed consent of business owner(s) and property owner(s); if the proposed parklet encroaches into an adjacent frontage, signed consent also of those adjacent business owner(s) and property owners(s);
- B. Proof of liability insurance, meeting city standards, which names the city as additionally insured for the term of the permit to the approval of the city risk manager;
- C. A liability release agreement wherein the recipient(s) of the permit agrees to hold the city harmless from liability arising from the operation of such parklet;
- D. A detailed site plan, drawn to scale, noting dimensions of the area proposed for a parklet outdoor dining; identify proposed location, dimensions, number of parking stalls affected, accessible pedestrian path of travel, design features and construction materials. Plans shall identify distance to nearest crosswalk/intersection/driveway, location of any adjacent utilities, street furniture, lighting, and landscape features proposed. Where vertical elements or roofing systems are proposed, application shall include structural drawings and calculations prepared by a licensed architect or engineer. Where lighting is proposed, applications should identify location and type of electrical connections to be used the proposed number and location of tables, chairs and other furnishings to be included in the dining area; the relationship of the outdoor dining area to the indoor dining area; and all sidewalk obstructions in the vicinity;
- E. A detailed description of the type, color, and material of all proposed outdoor furniture, such as tables, chairs, barriers, planters, umbrellas, signs, and lighting;
- F. A description of any additional parking that will be provided;
- G. A statement of proposed hours of operation; and any other information deemed necessary by the community development or public works directors.

5.51.035 Fees.

Parklet. In addition to application fees for administrative approval, the applicant(s) shall pay an annual parking space use fee. Encroachment permit fees shall be waived for the parklet installation unless public improvements are proposed. If the parklet installation includes physical changes to an existing building, fees for architectural review may be required. If improvements are proposed to the existing sidewalk, including widening, sidewalk repaving, or any demolition or relocation of public property, an encroachment permit and associated public works inspection fees shall apply. Additional parking spaces or in-lieu fees for parking may be required. Fees shall be as adopted by resolution of the city council.

5.51.040 Review procedures.

Public noticing and review procedures shall be the same as those required for an administrative review.

5.51.045 Eligible sites.

Parklets must be located on a public street with a posted speed limit of 25 mph or less with on-street parking.

5.51.050 Required operational standards.

Parklet permits must conform to the operational standards set forth in Chapter 4, Operating Requirements for Outdoor Dining of the Outdoor Dining Guide

5.51.055 Terms and expiration.

A parklet permit will be for an unlimited term, unless a limited or probationary term is deemed appropriate by the community development director where potential conflicts with other uses require operational evaluation. The permit shall automatically expire upon expiration of the business tax certificate or upon failure to pay the required annual parking space use fee. Operators wishing to renew an expired permit shall submit a new application with appropriate fees. Permits may be transferred to new business owners at the same property location subject to city approval of a new application reflecting new ownership.

5.51.060 Grounds for denial of permit.

The community development director shall deny the parklet permit if the operation will not meet provisions of this chapter or will otherwise create unresolvable conflicts with public facilities.

5.51.065 Revocation or suspension of permit.

- A. The city retains the right to revoke or suspend the permit upon twenty-four hours' written notice to the parklet operator for any cause, regardless of conformance with these provisions. Situations that may merit suspension or revocation include, but are not limited to:
1. Emergencies, parades, necessary construction or maintenance, at the discretion of the public works director; or
 2. Suspension, revocation, or cancellation of any necessary health permit(s); or
 3. Incorrect or inadequate insurance coverage; or
 4. Failure to comply with conditions of permit approval.

- B. Within twenty-four hours of receipt of written notice of revocation or suspension, regardless of any appeal of the action, the operation shall cease and the parklet operator shall restore the parking space to the condition existing prior to the placement of parklet facilities or to some other condition acceptable to the public works director.
- C. The city retains the right to immediately revoke, suspend or modify the permit if:
 - 1. Under a state of emergency, the parklet use may affect the health, safety or welfare of the general public as determined by the public works director, police chief or fire chief;
 - 2. Failure to comply with certain conditions of the parklet permit for parking space use is determined to constitute a health, safety or welfare hazard to the general public as determined by the public works director, police chief or fire chief.
- D. If pursuant to the above requirements, public space used for parklets are not restored to order in the time specified by the city, the city may remove any and all facilities installed within the right-of-way. Reimbursement of city costs for said removal shall be the responsibility of the parklet permit holder.

5.51.070 Appeals.

Decisions of the community development director to approve, deny, revoke or suspend a parklet permit, may be appealed to the planning commission for final decision.

SECTION 5. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The New Times, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after their final passage.

INTRODUCED on the ____ day of _____, 2022, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the ____ day of _____, 2022, on the following vote:

AYES:
NOES:
ABSENT:

Mayor Erica A. Stewart

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington
City Clerk

O _____