



CITY OF  
**PALO  
ALTO**

## **CITY COUNCIL STAFF REPORT**

**From: City Manager**

**Report Type: ACTION ITEMS**

**Lead Department: Planning and Development Services**

**Meeting Date: March 13, 2023**

**Report #: 2301-0888**

### **TITLE**

Provide Direction on Permanent Parklet Program Regulations and Proposed Ordinance and Approval of Budget Amendments in the General Fund, CEQA status – categorically exempt (15301 and 15304(e))

### **RECOMMENDED MOTION**

Staff recommends that the City Council:

1. Review and provide direction on:
  - a. The proposed changes to the parklet standards (Attachment A), including:
    - i. Parklet size – maximum of 2 parallel parking spaces or 3 angled parking spaces (letter of consent required for extending beyond frontage consistent with previous October 2022 direction)
    - ii. Heaters
    - iii. Parklet location, eligibility, and design standards
    - iv. Application requirements
  - b. Parklet fees to be collected – specifically the Parklet License Fee (for use of the public right-of-way)
2. Amend the Fiscal Year 2023 Budget Appropriation for the General Fund by (2/3 supermajority approval):
  - a. Increasing the Public Works Department expenditure appropriation for contract services by \$85,000, and
  - b. Decreasing the Budget Stabilization Reserve by \$85,000.

### **EXECUTIVE SUMMARY**

The development and management of parklets currently requires a high level of effort from multiple departments, which depending on council direction may increase. In October 2022, Council directed staff on next steps in the development of a parklet program. These steps included implementing the draft permanent parklet standards, extending the temporary program through June 2023 and implementing a letter of consent requirement.<sup>1</sup> As staff have continued to develop and refine the parklet program and implement the letter of consent requirement, several added dimensions and parameters have arisen. These issues have surfaced important areas for Council direction as the City continues its parklet program including the potential changes to the parklet program standards and operations. One of the primary

issues is the overall size and scale of parklets and the suitability of the parklet regulations across varying sized parklets and structures.

Staff requests Council review proposed changes to the standards presented in Attachment A<sup>1</sup> and provide general feedback related to operational clarifications and design standards. Staff recommendations seek to focus Council feedback on:

- Addressing the size and scale of parklets including a size limit for parklets up to 2 parking spaces.
- Updating to heating, ADA, and application requirements for parklets.
- Title 18 applicability
- Specific guidance on the parklet cleaning and license fee for use of the public right-of-way.
- Resources needed to support the parklet program temporarily with ongoing needs to be addressed in FY 2024.
- Updating the Temporary Parklet Program administration and Letter of Consent

Following Council direction, staff will refine design standards and program operations as needed and return in the spring with a formal ordinance to enact the program.

The development of the program and administration of the temporary program has required significant staff time and resources. Staff requests that Council approve the appropriation of \$85,000 from the General Fund to hire a consultant to assist with the program until additional staff can be hired. An additional 0.5 FTE Engineering Technician III position will be proposed as part of the FY 2024 Operating Budget process in the Public Works Department to staff the next steps in program initiation and operations. The discussion of parklets applies only to streets that are open to vehicular traffic and the car-free street portion of Ramona Street; the discussion of at-grade dining on California Avenue is a separate topic that will be addressed through subsequent conversations about car-free streets.

## **BACKGROUND**

Throughout the United States, outdoor dining became an important aspect of life during the COVID-19 pandemic. For many restaurants, offering outdoor dining allowed them to remain open and endure the pandemic. For customers, outdoor dining became a way to enjoy the company of others with decreased risk of spreading COVID-19. Palo Alto, like many cities, allowed parklets for the very first time to aid local businesses and provide a place for residents to gather. The pilot parklet program was generally well-received by residents, patrons, and restaurateurs.

Since the implementation of the pilot program, roughly 35 parklets have been built in Downtown and the California Avenue area, allowing residents to gather and businesses to operate in a safe way. However, the pilot parklet program and guidelines<sup>2</sup> were developed with a focus on reducing risk and maximizing safety for parklet patrons, motorists, and pedestrians. Due to the emergency nature of the program's development, not all operational logistics and design standards were included.

While expedient, the pilot program and standards have led to a wide range of parklet designs and operations. Compliance with the standards has varied greatly between permit holders, and while staff continued to document and provide notices of violations to permit holders, enforcing corrections has remained challenging. Moreover, with the end of the COVID-19 State of Emergency, cities, businesses,

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<sup>1</sup> Attachment A contains a redlined version of the parklet standards since the October 24<sup>th</sup> City Council meeting.

property owners, patrons, and residents are all contemplating parklets' continuing presence in the public right-of-way and their role in the public realm over the long term. In tandem, businesses and property owners raised concerns over parklets' permanent encroachment over neighboring business frontages regarding both enforcement of guidelines and lack of support/consent.

On October 24, 2022, City Council directed staff to implement the draft permanent program standards, and implement a neighbor consent letter requirement for both temporary and permanent parklets using a parking space whereby more than 50% of the space is not in front of their storefront, or any portion of an unmarked space is not in front of their storefront. As of January 1, 2023, the Public Works Department required new and existing parklets to renew their permits and demonstrate compliance, including the letter of consent requirement.

#### History of Pilot Parklet Program

In 2020, Palo Alto expanded opportunities for outdoor dining in response to the COVID-19 pandemic, including a pilot parklet program. On June 23, 2020, the City Council adopted Ordinance No. 5500, which temporarily permitted businesses, such as restaurants, retail, and personal services to operate outdoors on both public and private property in lieu of normal zoning and parking requirements. Ordinance 5500 was adopted as an emergency ordinance based, in part, on the presence of restrictions prohibiting many indoor business operations due to the COVID-19 pandemic and associated Public Health guidelines. At the same time, the City Council approved Resolution 9909, which provided additional implementation guidelines for the pilot parklet program.

On April 19, 2021, the Council directed staff to develop a permanent parklet program with the input of the Architectural Review Board and directed staff to draft a resolution extending the pilot parklet program to December 31, 2021. That ordinance passed on June 22, 2021. On September 13, 2021, the program was extended again to a new sunset date of June 30, 2022.

On May 5, 2022 City staff presented draft standards for the permanent parklet program to the ARB and then to the City Council on May 9, 2022, to receive initial feedback on draft program standards and operational items. The Council extended the temporary program to the end of 2022, allowing for the ARB, staff, and the community to continue to refine the permanent program.

On October 24, 2022, City staff returned to the City Council to present the refined permanent parklet standards based on ARB and staff input, receive feedback on the program standards and operations, and extend the temporary parklet program through June 30, 2023. The Council staff report focused on three aspects of the program:

1. ***The use of propane heaters*** – fire code requirements and compatibility with average parklet dimension and design.
2. ***Parklet fees*** – determining a fee for use of the public right-of-way, and an overview of other parklet fees.
3. ***Letter of consent*** – a requirement for a neighbor consent letter if the parklet extends past the parking space(s) directly in front of the permittee.

The October 2022 meeting resulted in a robust discourse and valuable feedback. The Council extended the temporary parklets through June 2023 and directed staff to require a letter of consent in certain cases beginning January 1, 2023. Regarding the permanent program, the Council directed staff to implement the draft permanent standards upon adoption of a permanent parklet ordinance. Council also directed

staff to return with a recommendation for continuing propane use, establishing parklet fees, and limiting amplified sound to only come from buildings.

### ARB Review

The Architectural Review Board (ARB) provided feedback on the standards on May 5, 2022, and July 21, 2022, and recommended several changes. An *ad hoc* subcommittee also provided feedback on June 1<sup>st</sup> that informed the July ARB meeting. The July staff report, meeting minutes, and video are viewable on the City's webpage<sup>3,4</sup>. The permanent program design standards (Attachment A) reflect the ARB's input from these meetings including:

- allowing clear panels above 36 inches,
- prohibiting televisions and striking "shall not exceed 6 inches" from item IV.B.3.d. regarding the height of any plants contained within planters.
- Prohibiting tent-like structures and vinyl materials

### **DISCUSSION/ ANALYSIS**

Staff recommends that Council focus its discussion on five key areas:

1. The overall program direction and proposed changes to the permanent standards
2. Title 18 Applicability
3. Parklet fees
4. Amendments to the Fiscal Year 2023 Budget and Recommended Actions in the FY 2024 Budget Process
5. Update on Temporary Parklet Program administration and Letter of Consent

Staff have refined and revised the permanent parklet standards since the October City Council meeting, and Attachment A reflects staff's proposed changes. The City Council is encouraged to review the standards in Attachment A and identify any concerns or modifications that may be needed. Staff intend to start these standards as staff-level regulations once a formal ordinance is adopted later this spring.

#### 1. Overall program direction and proposed changes to the permanent standards

As mentioned above, staff have continued to refine permanent parklet standards and operations including implementing Council's direction to allow propane, require a letter of consent, and limit amplified sound on parklets. Staff reviewed the permanent program operations and application review processes. In doing so, staff encountered several added dimensions and parameters that resulted in the proposed changes to the permanent parklet standards outlined in Attachment A.

One of those dimensions is the size and scale of parklets in the public right-of-way. The attached regulations continue the prior trajectory of City Council discussion regarding parklets and the use of local regulations. The resulting regulations - including limiting parklets to 2 parallel parking spaces or 3 angled parking spaces - effectively scale back parklet footprints. This revised footprint balances the needs of restaurateurs and businesses with safety requirements, while honoring the overall program intent to enliven the public realm and enhance the experience of diners, pedestrians, and vehicles. The proposed changes also seek to streamline the program administration for both applicants and staff.

Staff recommend that the local standards and streamlined process outlined in Attachment A be applied to permanent parklets, including the standards on the following topics:

- a) Parklet size – maximum of 2 parallel or 3 angled parking spaces (letter of consent required consistent with October 2022 direction)
- b) Heaters
- c) Parklet location, eligibility, and design standards
- d) Application requirements

This report and accompanying discussion provide an opportunity for Council to provide feedback on the changes to permanent parklet standards and overall direction of the program.

#### *a) Parklet Size*

Staff recommend that parklets be limited in size to a maximum of two parallel parking spaces or three angled parking spaces, and that letters of consent would be required consistent with the October 2022 direction from the City Council. That direction was to require a letter of consent when a parallel parking space being used was more than 50% in front of another store's frontage.

Parklets must also meet all other location, eligibility, setback, and letter of consent requirements as outlined in the permanent parklet standards detailed in Attachment A.

A number of factors support a maximum parklet including:

- Per the Palo Alto Municipal Code, any new structure over 350 square feet requires an automatic sprinkler system, which requires a water connection and separate fire permit.
  - Limiting the parklet size to a maximum of two parking spaces ensures that they stay under this 350 square foot limit and avoid the need to install a costly automatic sprinkler system.
- Electrical panel load needs and lighting demands scale with parklet size and footprint – the size limitation and accompanying standards minimize these impacts.
- There is an interest in balancing the public and private use of the public right-of-way and this size limit and accompanying standards help reach that balance.
- A maximum parklet size allows staff to estimate occupancy increases with a parklet – discussed in greater detail below.
- Limiting parklet size ensures that street sweeping can still take place on streets with parklets
- A smaller streamlined parklet footprint limits encroachment over neighboring storefronts, providing greater certainty for businesses and staff.

Based on a survey of peer jurisdictions, many cities including San Francisco, Campbell, and San Mateo limit parklet sizes to a maximum of two parking spaces (see Table 1) and have no provision for allowing businesses to go beyond their frontage.

*Table 1. Neighboring Jurisdictions' Parklet Size Restrictions*

JURISDICTION	PARKLET SIZE RESTRICTION
<b>SAN MATEO</b>	Limited to the store's frontage. Max. 2 parallel spaces or 4 angled spaces.
<b>MORGAN HILL</b>	Limited to the store's frontage (cannot encroach on another store)
<b>MENLO PARK</b>	Limited to the store's frontage. (Max. 2 parking spaces, can request more by exception)

<b>LOS ALTOS</b>	Length of store's frontage (developing alternative maximum of parking spaces as well)
<b>BURLINGAME</b>	250 square feet (can be increased with approval from adjacent businesses if the parklet owner wishes to encroach past their store's frontage).
<b>CAMPBELL</b>	Max. 2 spaces or width of store's frontage (whichever is less) with requirement to use one of four parklet templates/design options provided by city-obtained architect. Maximum of 16 parklets in downtown.
<b>FREMONT</b>	No greater than 750 square feet (no parklets extend beyond their frontage))
<b>REDWOOD CITY</b>	Limited to store's frontage.
<b>SAN FRANCISCO</b>	Max. 2 parking spaces.

As seen in Table 1, many jurisdictions limit parklets size to the store's frontage. This avoids any need to obtain a letter of consent. Retail stores and restaurants have footprints and frontages of differing sizes in Palo Alto and a parklet may not be able to function in every situation. In instances where there is support from a neighboring business and landlord, it may be beneficial to have the parklet extend beyond the store's frontage. Greater discussion of letter of consent, including an update on the administration of this provision so far, occurs later in this report.

Staff is not recommending requiring that permittees add additional bathroom capacity. The recommended limitation on parklet size would minimize impacts on existing restroom facilities. This approach is similar to parklet regulations in other jurisdictions. If Council wanted to explore adding a bathroom requirement based on the additional patron capacity that the parklet would generate, one option could be to reference the bathroom standards contained in the California Building and Plumbing codes for indoor facilities. Council may want to consider the feasibility (including space, cost, and practicality) of requiring additional bathroom facilities

#### *b) Heaters*

Following Council direction, the proposed changes to the permanent parklet standards include the provision for propane heater use in parklets with a valid hazardous materials (HAZMAT) permit from the Palo Alto Fire Department (PAFD).

The use and storage of propane requires a HAZMAT permit with PAFD (requirements outlined in Table 2 below) to ensure compliance with safety regulations. None of the businesses with parklets have a permit to store and operate propane in parklets. The costs associated with propane heaters include the hazmat permit fee and the cost of propane tanks. The hazmat permit fee ranges from \$500 to \$3,000 annually depending on the quantity of propane being stored. In contrast, electric heaters would not require a hazmat permit but may require an upgraded electrical panel, which could cost approximately \$3,000 to \$5,000 based on discussions with local contractors.

The Office of Sustainability provided staff with metrics on the greenhouse gas impact of propane and electric heaters acknowledging the Council priority for climate change adaptation and protection.

- One propane tank emits 0.024 metric ton (MT) of carbon dioxide (CO<sub>2</sub>), which is the equivalent of driving ~60 miles (Environmental Protection Agency)
- Five propane heaters to heat an 800-square-foot patio from November to March emits approximately 20 tons of CO<sub>2</sub> (Atmospheric Fund).

- In Toronto Canada, widespread use of propane heaters for outdoor dining (where it is much colder than Palo Alto) comprises less than one percent of Toronto's GHG emissions.

Regarding GHG emissions, the Office of Sustainability suggests electric outdoor heaters as the best option because the city provides carbon-neutral electricity. These heaters cost more up-front but save expenses in the long run due to lower operating costs and would have a lessened impact on the environment.

Table 2 below summarizes the key differences between propane versus electric heater use on parklets based on staff research since the October Council meeting. If propane is allowed on permanent parklets, HAZMAT permits and associated inspections by the PAFD would be required for all businesses with parklets that use propane heaters.

*Table 2: Summary Propane vs. Electric Heaters*

Propane	Electric
<b>Requirements: HAZMAT permit:</b> <ul style="list-style-type: none"> <li>• Submit parklet plans to PAFD showing how and where propane will be stored, where the heaters will be used, and the quantity of propane to be stored.</li> <li>• Create California Environmental Reporting System (CERS) account and annually update propane use.</li> <li>• Pay applicable permit fees (\$500 to \$3,000 annually)</li> <li>• Store propane outside in secure metal cages (i.e., anchored to the ground) – propane cannot be stored on parklets, indoors, or in public right-of-way.</li> <li>• Propane must be stored and operated 5 feet clear of flammable material.</li> <li>• Propane must be use and stored a minimum of 5 feet from exits or exit discharge (10 feet from buildings having only one exit)</li> <li>• Propane heaters cannot be used under roofs, canopies, or tents, etc.</li> <li>• If businesses do not have an approved private outdoor storage area, all propane containers must be removed from the premises at the close of business every day.</li> <li>• Undergo annual inspections.</li> </ul>	<b>Requirements:</b> <ul style="list-style-type: none"> <li>• Must be an outdoor-approved type</li> <li>• Must be located on the parklet in accordance with the manufacturer's instructions and specifications.</li> <li>• Electric heaters must be placed at least 3 feet away from any combustible materials.</li> <li>• Must be plugged into an approved GFCI receptacle, no extension cords.</li> <li>• A panel upgrade <b>requires an electrical permit from the Building Department</b>. Any electrical equipment must be listed and carry a product certificate for its intended use by a recognized electrical testing laboratory.</li> </ul>
<b>Cost:</b> Permit Fee: \$500 to \$3,000 annually (depending on the quantity of propane being stored)	<b>Cost:</b> Electrical Panel upgrade (if needed) one-time estimated cost: \$3,000 to \$5,000
<b>GHGs:</b> 0.024 MT of CO2 emissions per propane tank	<b>GHGs:</b>

	Net-neutral – the City provides carbon-neutral electricity
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*c) Parklet Location, Eligibility, and Design*

As mentioned above, staff have continued to refine the permanent parklet standards, including changes to the parklet location, eligibility and design standards.

First, following Council direction, the proposed changes to the permanent standards limited parklets to the University Ave and portions of the California Ave downtown open to vehicular traffic. Second, staff recommend increasing the minimum setback from alleys, driveways, and lanes from 2 feet to 15 feet to increase vehicular and pedestrian visibility. Third, staff have provided additional and specific details on the ADA requirements for parklets including visual graphics of accessible table and chair requirements as well as a template floorplan to illustrate the requirements on parklets.

*d) Application Requirements*

The proposed permanent standards include four proposed changes to parklet application requirements, specifically:

- Letter of Consent Requirements: Incorporating previous Council direction, the parklet standards have been revised to require a neighbor letter of consent for parklets that are more than half of a parking space in front of their neighboring business' frontage. Staff were also directed to implement the letter of consent requirement in the temporary parklet program starting January 1<sup>st</sup>, 2022 (a summary of this effort is described below under (3) temporary parklet program administration and letter of consent).
- Parklet applications with a roof will require a licensed architect, civil, or structural engineer who is registered in the State of California, to stamp and sign a roof framing plan and associated calculations, as well as conduct an at-field observation prior to occupancy.
- Insurance requirements for businesses with a parklet are recommended to increase from \$1 million to \$2 million liability coverage (staff anticipate this increase would translate to an additional \$2,000 to \$3,000 annual cost increase to businesses with parklets).
- With accompanying exemptions from Title 18, discussed next in this report, a CUP amendment will not be required to extend alcohol service into a parklet.

## **2. Title 18 Exemptions for Parklets**

Staff have also identified some areas of the Palo Alto Zoning Code that require changes to accommodate the permanent parklet program and exempt parklets from some existing provisions of the City's zoning code. Currently, the expansion of alcohol service from an existing restaurant space into a larger area requires a Conditional Use Permit (CUP) amendment per PAMC Title 18, Zoning. Staff is preparing to present to the Planning and Transportation Commission (PTC) on with a draft section of the permanent program ordinance stating that parklets do not require an amendment to an existing CUP for alcohol service but are subject to the same conditions of approval that currently apply to the food serving use. Staff are also proposing that parklets be exempt from these other provisions of Title 18:

- Parking 18.52.040 – parklet does not count toward a business' square footage for off-street parking or parking assessment district and outside of PADs
- ARB 18.76.020(b)(1) – parklets are deemed an over-the-counter project, and therefore exempt



Parklets are also proposed to be exempt from sign review in 16.20.100(a) – prohibited locations. Title 16 changes do not require review by the PTC.

These exemptions will be built into the permanent parklet ordinance that will come back to Council.

### **3. Parklet Fees**

Staff recommends establishing five fees that will be required to establish a parklet under the permanent parklet program including:

- a) An initial application fee of \$2,000 to \$2,250
- b) An annual renewal fee of \$750 to \$1,000
- c) A cleaning fee
- d) A fully refundable deposit of \$3,000
- e) A license fee for use of the public right-of-way.

Each fee component is outlined in greater detail below. Staff seek specific guidance on the cleaning fee and license fee for use of the public right-of-way.

#### *Initial Application Fee*

An initial application fee of \$2,000 to \$2,250 is required to establish a parklet under the permanent program. This fee is based on a 100 percent cost-recoverable flat rate based on the average number of hours it takes for staff to process an application and conduct site inspections, including Public Works, Transportation, and Planning (if applicable) review. A portion of this fee is also based on the staff time required for ongoing program administration such as providing customer service, ensuring compliance with design and operation standards, and responding to complaints.

#### *Annual Renewal Fee*

An annual renewal fee of \$750-1,000 is required to renew a parklet permit annually. This fee is also based on a 100 percent cost-recoverable flat rate. An application renewal is not expected to require the same level of staff effort as processing a new application, and as a result, the amount is less than the initial fee. This fee is based on the staff time required for ongoing program administration such as providing customer service, ensuring compliance with design and operation standards, and responding to complaints.

#### *Cleaning Fee*

At the October 2022 meeting, Council directed staff to consider a separate fee for increased sidewalk cleaning associated with parklet uses. It is challenging to calculate a cleaning fee to charge parklet owners. The cleaning costs are likely fixed, but the revenue ultimately generated is dependent on the number of parklets that participate in the permanent program, which is not known at this time.

Currently, sidewalks in the Downtown area are steam cleaned once a month and include University, Hamilton, and Lytton Avenues (from Alma Street to Webster Street). The sidewalks on intersecting streets from Alma to Waverley Street are also steam cleaned monthly between Lytton Avenue and Forest Avenue and from Waverley Street to Webster Street between Lytton Avenue and Hamilton Avenue.

At this time, staff is not prepared to offer a recommendation but wanted to provide potential options for cleaning in the Downtown areas.

Below are the estimated annual costs for current and increased cleaning in the Downtown area:

Frequency	Annual Cost
Monthly*	\$59,040
Semi-monthly	\$100,680
Weekly	\$149,040

\*Current frequency

Another option could be to have a new full-time staff person dedicated to picking up trash and cleaning up spills more quickly.

#### *Deposit Fee*

Staff recommends requiring a one-time \$3,000 security deposit to address any unrepaired damages to the roadway or scenarios when the City may need to forcibly remove a parklet. The security deposit amount is based, in part, on the estimated number of hours it would take to remove a parklet and store any private property.

#### *License Fee*

Lastly, based on prior Council direction, a license fee for use of the public right of way would be required. Unlike the fees above that are based on staff time and program administration costs, this fee could be set based on the Council's reasonable assessment of the value of land used by the parklet operator and incorporate a certain amount of discount for that use.

After reviewing peer city approaches, staff proposes establishing a rate per square foot using current ground floor retail lease rates and applying a "discount" to account for the public right-of-way features being unfinished with no electricity, roof, walls, heat, etc., and adjacent to the travel lane. Other cities that apply a use-fee for the public right-of-way include Los Altos, Burlingame, Mountain View, Redwood City, and San Mateo.

Based on Council direction, staff examined up-to-date ground floor retail rental rates in Palo Alto. The following analysis is based on the 2022 average rental rates, provided by CoStar. Table 3 summarizes three different rental rate options and yields an annual fee per parking space used in a parklet. Table 4 demonstrates the parklet fee options based on the level of discount the City could assign to each fee. At the October meeting, Council indicated interest in permanent parklet fees falling in line with peer jurisdictions. Table 5 summarizes all five parklet fee components and compares them to other peer cities that have also required a license fee for the use of the public right-of-way.

Staff seeks the Council's direction on where to set the license fee.

*Table 3: Fee Comparison Using Palo Alto Retail Rental Rates*

Ground Floor Retail Rental Rates*	RATE/SQFT	COST/SPACE (160 sqft)	COST/PARKLET (320 sqft)
Downtown (DT) *Includes Stanford Shopping Center	\$79	\$12,595	\$25,190
Non-Downtown (NDT)	\$56	\$8,947	\$17,894

All Palo Alto (APA)	\$71	<b>\$11,419</b>	<b>\$22,839</b>
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Source: 2022 average rental rates

Note: the average parallel parking space is 160 square feet

*Table 4: Parklet Fees after Discount*

	RATE/SQFT			COST/SPACE			COST/PARKLET		
Discount	DT	NDT	APA	DT	NDT	APA	DT	NDT	APA
90%	\$8	\$6	\$7	\$1,260	\$895	\$1,142	\$2,519	\$1,789	\$2,284
80%	\$16	\$11	\$14	\$2,519	\$1,789	\$2,284	\$5,038	\$3,579	\$4,568
70%	\$24	\$17	\$21	\$3,779	\$2,684	\$3,426	\$7,557	\$5,368	\$6,852
60%	\$31	\$22	\$29	\$5,038	\$3,579	\$4,568	\$10,076	\$7,158	\$9,135
50%	\$39	\$28	\$36	\$6,298	\$4,474	\$5,710	\$12,595	\$8,947	\$11,419
40%	\$47	\$34	\$43	\$7,557	\$5,368	\$6,852	\$15,114	\$10,737	\$13,703
30%	\$55	\$39	\$50	\$8,817	\$6,263	\$7,994	\$17,633	\$12,526	\$15,987
20%	\$63	\$45	\$57	\$10,076	\$7,158	\$9,135	\$20,152	\$14,316	\$18,271
10%	\$71	\$50	\$64	\$11,336	\$8,052	\$10,277	\$22,671	\$16,105	\$20,555
0%	\$79	\$56	\$71	\$12,595	\$8,947	\$11,419	\$25,190	\$17,894	\$22,839

Note: Dollar amounts represent annual rates

Table 5: Peer Jurisdiction Fee Comparison

	Palo Alto	Los Altos	Burlingame	Mountain View	Redwood City	San Mateo
Staff fees						
Initial Application Fee	\$2,250	\$500		\$769	\$2,226	\$500
Annual Renewal fee	\$1,000			\$205	\$583	
Cleaning Fee			\$3,000	\$576		
License Fee*		\$3/sqft	\$5/sqft	\$6/sqft	\$10.16/sqft	\$1.56/sqft
License Fee (160sqft)		\$480	\$800	\$960	\$1,625.60	\$249.60
License Fee (320sqft)		\$960	\$1,600	\$1,920	\$3,251.20	\$499.20
Refundable deposit	\$3,000					
Total 1st year (160 sqft)	\$5,250	\$1,460	\$4,600	\$3,265	\$5,477.20	\$999.20
Total ongoing (320 sqft)	\$1,000	\$960	\$4,600	\$2,701	\$3,834.20	\$499.20

\*Note: Where a jurisdiction did not specify a fee per square foot, the \$/sqft was calculated by dividing the total license fee by the average parking space size to determine the \$/sqft indicated here. Therefore, these fees may not exactly match their respective jurisdictions' fee schedule.

In the future, it is possible that additional permit fees may be required to recover the costs of moving existing bike racks to allow parklets to operate in the adjacent right-of-way, but such costs are unable to be quantified at this time. As the permanent program is developed and implemented the Office of Transportation will monitor these costs and may bring forward a future request to adjust permit fees if needed. Staff anticipates bringing forward these fees for Council review and approval as part of the FY 2024 Municipal Fee Schedule.

#### **4. Amendments to the Fiscal Year 2023 and Recommended Actions in the FY 2024 Budget Process to Address Program Management**

Administering the program has required significant staff resources and time. Public Works needs staffing resources to implement the permanent parklet program, including permit review, enforcement, outreach, inspection, administration, as well as manage the program on an on-going basis. Staff expects a large percentage of the existing 35 parklet permit holders will transition to the permanent program. Additionally, as restaurants open and close, processing new applications and ensuring abandoned parklets are disposed of properly will be important.

These efforts require dedicated staff to take the lead managing applications that sometimes require multiple revisions. This person will serve as the first and single point of contact for permit holders or applicants that have questions, as well as members of the public who have questions or complaints.

Staff support will require a new part-time position, a 0.5 FTE Engineering Technician III, for the Public Works department. In FY 2023, this will be funded through vacancy savings as an overstrength position and in FY 2024 will be recommended to be formalized as part of the budget process. The cost of the position is expected to be covered by the cost recovery fees outlined above. Additionally, staff request additional funding of \$85,000 in FY 2023 to get the program launched more quickly to hire a consultant to facilitate the program until a permanent staff person can be hired and trained.

## **5. Update on Temporary Parklet Program Administration and Letter of Consent**

Over the past two and a half years, over 40 temporary parklet permits have been issued, including permit review, enforcement, inspection, administration - i.e., collection applications and insurance certificates – and ongoing program management. Starting January 1, 2023, staff began work to implement the Council's October 24, 2022, motion to require Letters of Consent (LOC) for parklets that are more than half of a parking space in front of their neighboring business' frontage. Letters and emails were sent to all parklets owners based on their LOC requirement. This effort has taken more than 160 hours of additional work by Public Works staff and additional hours from other departments. Below is a status update for the parklets as of March 1.

Restaurants that required Letters of Consent – (15):

- 8 businesses are complete
- 1 business has closed and their parklet needs to be removed
- 1 business no longer wants the parklet anymore and is going to remove it
- 1 business has not built their parklet yet and needs to obtain LOC before they can build parklet
- 4 business are unable to obtain the LOC and need to resubmit parklet plans to reduce their existing footprint

Parklet owners that were unable to obtain Letters of Consent originally were given a deadline of March 6 to submit revised permit applications and plans reflecting a compliant parklet. Given the proximity of that date to the Council's discussion, staff notified the four affected businesses that the March 6 date has been extended to March 31. Once revised applications and plans are submitted, time will be needed for City review and approval, followed by an additional time allowance before any physical changes are required.

In addition, the City reached out to the remaining parklet owners (those who do not require a Letter of Consent) to renew their existing permit under the pilot program and supply current insurance certificates.

Updated permit applications & Insurance only – (26):

- 7 businesses had expired permits and never built the parklets; staff emailed them to inform them that their permits were expired and void, and would need to reapply if they wanted to build a parklet in the future
- 19 business were emailed that revised applications and current insurance were needed by January 31
  - 15 businesses have submitted revised applications and insurance and are complete
  - 3 businesses – have submitted revised applications and insurance that are still under review
  - 1 business has yet to respond to any communication from the City and fines will be administered starting March 14 if no paperwork is turned in before then.

## **POLICY IMPLICATIONS**

Overall, the permanent parklet program team requests the City Council to decide how it wants to allocate the use of public space and which local standards should be applied to these structures. Specifically, the permanent parklet program seeks to identify under what conditions, terms, and specific portions of public streets can be used by private restaurants for outdoor dining. The thoughtful establishment of how to steward the resource of public space requires careful consideration of many aspects of the program.

For some residents and merchants alike, the availability of public on-street parking spaces remains a concern. Some worry that permanent parklets will reduce the availability of parking spaces, making it difficult to park and reducing the number of customers. These concerns can partially be addressed through the annual application period which can allow City staff to consider the locations of parklets and potential impacts on parking availability. In addition, efforts to ensure public garages and lots can be easily accessed and located will ensure customers and visitors traveling by car can easily park their vehicles. The annual application process is also an opportunity to address any outstanding compliance or enforcement issues with parklet operators.

### **FISCAL/RESOURCE IMPACT**

The permanent parklet program will require dedicated program funding and staffing resources not currently approved or allocated. If the parking space lease rate is set at a competitive rate, parklets will continue to be a part of the local landscape and generate annual revenues that can help fund program costs, including staff. Staff can ensure ongoing compliance, collect annual fees and charges, provide support to applicants and inter-departmental staff, respond to disruptions or challenges, and ensure the program remains a part of Palo Alto's vibrancy through ongoing attention. Staff anticipates that at minimum a half-time position, funded by program revenue, will be needed to accomplish administration of this new permanent program and the necessary duties.

In order to project revenue generated by the parklet program, staff will need a better understanding of the preferred license rate (as discussed above). With that information, the City will be better able to estimate how much revenue might be anticipated and when the revenue may be received. Revenue adjustments will be brought forward as part of the development of the Fiscal Year 2024 Operating Budget.

To date, the pilot parklet program has operated on an interim basis, not charging fees for the permits or for using the sidewalks and roads. In addition, department budgets have absorbed the cost to administer the pilot program. While departments have temporarily absorbed the cost of the pilot program, the permanent program requires dedicated resources and staffing capacity.

This program will require a new part-time position, a 0.5 FTE Engineering Technician III, for the Public Works department that will be funded through vacancy savings as an overstrength position in FY 2023. In the FY 2024 budget process, staff will legitimize the addition of this position in the Public Works Department to staff the program. The ongoing annual cost would be approximately \$75,000, and covered by revenue collected from the recommended parklet fees.

Additionally, staff requests a one-time appropriation of \$85,000 from the General Fund in Fiscal Year 2023 to hire a consultant to assist with permanent program initiation and implementation until the new permanent staff person can be recruited and trained.

Decisions on the parklet program requirements and design standards affect coordination required between various departments. Once direction is provided by the City Council, staff will return to Council for adoption of the parklet application and renewal fees based on actions taken. Once Council makes final decisions on parklet program parameters, final fees for parklet applications and renewals will be finalized based on coordination required with other departments and established through a separate item.

## **STAKEHOLDER ENGAGEMENT**

As discussed earlier in this report, the Architectural Review Board provided feedback on the standards.

Additionally, on April 27, 2022, staff met with nine (9) members of the Palo Alto business community to provide of preview of proposed permanent parklet program standards. The group included restaurant owners and property owners in the Downtown and one restaurant/business owner from California Avenue. Staff reviewed key areas of change being proposed to city decision-makers for feedback. The key topics and corresponding feedback from the meeting are summarized below:

- *Design Standard Feedback:* Concerns over the cost, maintenance, and visual limitations of planters and landscaping on parklets. Strong preference for allowing sidewalls on parklets.
- *Power Supply Feedback:* Concerns over cost of electric connectivity and potential retrofitting and a preference for continued propane use.
- *Program Cost Feedback:* Mixed feedback with some expressing the cost should be free given the revenue being provided to the City through sales tax, and others suggesting a fee is appropriate for the private use of public space.

In addition to focused feedback, general comments included an interest in example parklet plans that businesses could reference for their applications, and a suggestion that the design guidelines be flexible enough for future tenants to assume a parklet without the need for significant retrofitting.

Staff have taken these comments into consideration and addressed them throughout the development of the permanent program. Additionally, the permanent program is informed by the experience of 35 parklets that now exist throughout Palo Alto and a review of permanent parklet programs in other cities. Staff carefully considered how to balance safety, aesthetics, the public realm, and the needs of local businesses and the public.

## **ENVIRONMENTAL REVIEW**

The pilot parklet program is categorically exempt from California Environmental Quality Act (CEQA) under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment). Staff will determine the required CEQA analysis of the permanent parklet program going forward.

## **ATTACHMENTS**

Attachment A - Draft Palo Alto Permanent Parklet Program Standards (redlined)

Attachment B - Draft Palo Alto Permanent Parklet Program Standards

## **APPROVED BY:**

Jonathan Lait, Planning and Development Services Director