



**DISCUSSION ITEM**

**Agenda Item # 9**

**AGENDA REPORT SUMMARY**

**Meeting Date:** November 30, 2021

**Subject:** City of Los Altos Parklet Program

**Prepared by:** Anthony Carnesecca, Economic Development Coordinator

**Reviewed by:** Jim Sandoval, Engineering Services Director

**Approved by:** Gabriel Engeland, City Manager

**Attachment(s):**

1. City of Los Altos Parklet Program Guide

**Initiated by:**

City Council directed staff to bring a permanent parklet program back for review at their City Council meeting on November 19, 2019.

**Previous Council Consideration:**

November 19, 2019 & August 28, 2020

**Fiscal Impact:**

None.

**Environmental Review:**

Not applicable.

**Policy Question(s) for Council Consideration:**

- Does the City Council wish to approve this Parklet Program that will go into effect at the termination of the local emergency order?

**Summary:**

- City Council approved the Pilot Parklet Program in November 2019 through Fall 2021 and the City manager authorized the COVID Parklet Program through the end of the local emergency declaration under his emergency powers while notifying City Council in August 2020.
- This program will allow restaurants to continue outdoor dining in parklets after the local emergency declaration is lifted.
- The City conducted outreach and site walks with the Chamber of Commerce and Los Altos Village Association to create the program guidelines and they have provided letters of support for long-term parklets.

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**Reviewed By:**

City Manager

*GE*

City Attorney

*JH*

Finance Director

*JE*

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**Subject:** City of Los Altos Parklet Program

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**Staff Recommendation:**

Approve the City of Los Altos Parklet Program allowing restaurants to continue outdoor dining.

**Purpose**

The goals of the Los Altos Parklet Program are to:

1. Create a long-term parklet program.
2. Increase the vibrancy and atmosphere of Downtown Los Altos.
3. Stimulate the local economy through increased dining areas.
4. Encourage creative use of public spaces.
5. Limit bureaucracy, red tape, and cost to businesses.

**Background**

On August 28, 2018, the Los Altos City Council adopted the Downtown Vision. The vision provides the City of Los Altos with many approaches, long-term improvements, and short-term programs that would increase vibrancy in the downtown triangle. Parklets are an easy and effective way to provide outdoor dining opportunities for residents and visitors in Downtown Los Altos.

On November 19, 2019, the Los Altos City Council unanimously approved the City of Los Altos Pilot Parklet Program. This pilot program was intended to allow restaurant owners to build parklets that would expand outdoor seating opportunities through Fall 2021, which would allow restaurants to have two full years with their parklets before a Council review of the program. These parklets were required to be built-out deck structures with significant design and construction specifications. Furthermore, this program limited the number of parklets on any given block downtown and prevented parklets from being installed across the street from one another.

In early 2020, City staff had preliminary meetings with numerous restaurants that were interested in a parklet installation. Many restaurants were interested, but some were hesitant to spend a significant amount of money on a parklet installation for a two-year period with an uncertain long-term timeline. No parklet applications were received from restaurants.

In March 2020, City Council ratified a local state of emergency due to the COVID-19 pandemic. Shortly thereafter, the County of Santa Clara issued a shelter-in-place order that limited restaurant operations. This order prevented restaurants from serving customers indoors or outdoors, but through delivery or pick-up only.

The City of Los Altos, Los Altos Chamber of Commerce, and Los Altos Village Association started WhatsOpenLosAltos.org in March 2020 for restaurants to advertise their menu, hours of operation, contact information, order methods, and their own GoFundMe campaigns. This created a singular location for interested diners to identify how best to support their favorite local restaurants, especially during the closure of on-site dining.



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Heading into summer 2020, Santa Clara County reopened outdoor dining and many jurisdictions began exploring potential options for restaurants to expand their outdoor dining space. Through many meetings with community stakeholders, visiting different restaurant locations, and working with an architectural firm, the City decided to close sections of downtown streets for Open Streets Los Altos allowing restaurants to expand their outdoor seating area into the public right-of-way by signing a permit application and providing proof of insurance documents. This program closed Main and State streets for pedestrian-only traffic every Thursday morning through Sunday night from June 2020 through September 2020.

This program was successful in allowing restaurants to expand their outdoor dining space as the guidelines required tables to be ten feet apart from one another and keep diners six feet apart from one another at all times. However, some neighboring businesses were frustrated with the sections of the block that did not have restaurants and there were large sections of the block that were not properly utilized, while some other businesses were frustrated with the loss of on-street parking spaces adjacent to their businesses. The City met with restaurants, retailers, and personal service businesses who indicated that parklets may be a middle ground solution allowing restaurants to have their dining space while re-opening the street to vehicular traffic and open additional parking spaces near storefronts.

As Open Streets Los Altos was coming to a close, the City created the COVID Parklet Program that was approved through Fall 2021 in alignment with the Pilot Parklet Program under the emergency powers of City Manager Chris Jordan with the support of City Council. After speaking with the City Attorney, the City's emergency powers remain in effect until further notice. At its meeting on August 24, the City Council voted to extend the local emergency order through the end of the 2021 calendar year.

Through the COVID Parklet Program, City staff presented three options for restaurants to continue with outdoor dining in the public right-of-way. Two of the options were to install either K-rail or water filled barriers that would be rented or purchased from a company through the City. Neither of these options were adopted by restaurants. The third option was to install a protective barrier of wine barrels filled with 500 lbs. of water, sand or concrete along the perimeter of the parklet that would provide a safer environment for restaurant patrons dining adjacent to the street. All restaurants selected the wine barrel option, which presented clear parameters for the parklet with diagrams and specifications utilizing the barrels. A gracious community member connected with a winery in Sonoma County that donated 200 barrels to support the effort and lowered the cost of installation for restaurants. These barrels have created a unique and uniform feel to the parklets that make them unique to Los Altos.

Prior to an application, City staff met with restaurants on-site to walk through their plan and identify the best way to utilize their space. The restaurants were required to submit an application, cost and



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timeline breakdown, site plan, elevation drawings, Americans with Disability Act (ADA) access plan, letters of support from any neighboring businesses that would lose parking in front of their business, signed City permit agreement, and insurance documents. Upon review and approval of the documentation, City staff would conduct one final inspection to verify that everything was installed appropriately and the parklet met the guidelines of the program along with the COVID guidelines for outdoor dining. As winter set-in and restaurants wanted to add canopies and heaters, SCC Fire Department became involved in helping us develop Outdoor Dining Winterization Guidelines that assured parklets would comply with the State and County fire codes.

As of June 16, 2021, the City received 20 parklet applications under the COVID Parklet Program with 18 approved parklets and two applications withdrawn by the restaurant owner. These 18 parklets are located at various restaurants around downtown that have allowed them to serve diners outdoors as most were installed shortly after the end of Open Streets Los Altos.

Only a few parklets have deck-like structures as specified in the Pilot Parklet Program, but this was not required in order to keep cost and installation at a minimum under the COVID Parklet Program. Of the current 18 parklets installed in downtown, only two would meet some of the guidelines for the pilot program because they have a deck-like structure for the entire portion of the outdoor dining space, but those parklets still do not meet the size requirements as they extend in front of neighboring businesses. None of the current parklets would meet the entire guidelines for the Parklet Pilot Program, but all 18 meet the guidelines for the COVID Parklet Program. City staff has learned through the COVID Parklet Program that these parklets can maintain safety and appearance without some of the guidelines presented in the previous iteration.

### **Discussion/Analysis**

Moving forward, many jurisdictions are evaluating extensions of current parklet programs or the creation of a long-term parklet program as residents and visitors have appreciated the new outdoor dining opportunities in the community. Through these parklet programs and continued outreach with the business community, staff have learned a great deal about what will allow restaurants to build and sustain great outdoor dining parklets in the Los Altos community.

In Downtown Los Altos, there are a total of 1,468 parking spaces with 242 on-street parking spaces and 1,177 off-street parking spaces. Current parklets occupy a total of 68 parking spaces with 60 on-street parking spaces and 8 off-street parking spaces, which means that parklets occupy 4.6% of the total parking spaces downtown.

Below is a breakdown of the parking spaces occupied by current parklets along with whether the parklet encroaches in front of their neighboring business and whether the parklet is located across the street from another parklet.



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Main Street

| <b>Restaurant</b>                       | <b>Parking Spaces</b> | <b>In front of neighboring business?</b> | <b>Across from parklet?</b> |
|---|-----------------------|--|-----------------------------|
| Bari Bar Bistro                         | 4                     | Yes                                      | Yes                         |
| The Post                                | 6                     | Yes                                      | Yes                         |
| Opa (Closed, but may be occupied later) | Was 3, now 0          | Yes                                      |                             |
| Rustic House                            | 6                     | Yes                                      | Yes                         |
| Café Nur                                | 3.5                   | Yes                                      | Yes                         |
| Tre Monti                               | 5.5                   | Yes                                      | Yes                         |
| Casa Lupe                               | 3                     | Yes                                      |                             |
| Lisa's Tea Treasures                    | 4                     | Yes                                      |                             |
| Lulu's                                  | 3                     | Yes                                      |                             |
| RedBerry                                | 3                     | Yes                                      |                             |
| <b>Total</b>                            | <b>38</b>             |  |                             |

State Street

| <b>Restaurant</b>   | <b>Parking Spaces</b> | <b>In front of neighboring business?</b> | <b>Across from parklet?</b> |
|---------------------|-----------------------|--|-----------------------------|
| Sumo Sushi          | 1                     |  |                             |
| ASA                 | 4                     | Yes                                      | Yes                         |
| Urfa Bistro         | 3                     | Yes                                      | Yes                         |
| Rick's Café         | 3                     | Yes                                      | Yes                         |
| State Street Market | 8                     |  |                             |
| Aurum               | 3                     |  |                             |
| <b>Total</b>        | <b>22</b>             |  |                             |

Parking Plazas

| <b>Restaurant</b> | <b>Parking Spaces</b> | <b>In front of neighboring business?</b> | <b>Across from parklet?</b> |
|-------------------|-----------------------|--|-----------------------------|
| State of Mind     | 5                     |  |                             |
| Sumika Grill      | 3                     |  |                             |
| <b>Total</b>      | <b>8</b>              |  |                             |



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Below is a breakdown comparing the major components of the Pilot Parklet Program and COVID Parklet Program:

| <b>Program Component</b>  | <b>Pilot Parklet Program (2019)</b> | <b>COVID Parklet Program (2020)</b> | <b>Staff recommendation moving forward</b> |
|---|-------------------------------------|-------------------------------------|--|
| Deck-like structure requirement?                                      | Yes                                 | No                                  | No   |
| Cannot be across from another parklet?                                | Yes                                 | No                                  | No   |
| Limit on quantity per block?  | Yes (2 per block)                   | No                                  | No   |
| Cost-recovery application fee?  | Yes                                 | No                                  | Yes  |
| Able to expand with neighbor approval?                                | No                                  | Yes                                 | Yes  |
| Able to visually block signage of neighboring business with approval? | No                                  | Yes                                 | Yes  |
| Common design guidelines?   | No                                  | Yes                                 | Yes  |
| Weatherization guidelines?  | No                                  | Yes                                 | Yes  |
| Maintain the aesthetic of parklet?                                    | Yes                                 | Yes                                 | Yes  |

Staff recommends that the City keep the current parklets as-is under the current COVID guidelines through the end of the local emergency declaration to allow restaurants to continue their economic recovery and allow diners to continue outdoor dining safely. This would allow restaurants to continue generating revenue in recovery while allowing them to expand their outdoor dining facilities as necessary if restrictions increase.

This long-term parklet program incorporates many of the lessons learned through crafting both programs, seeing parklets built out under the COVID Parklet Program, and identifies some of the shortcomings in the programs that may be improved moving forward to maintain the high-level of parklets in the community. Here are the major components of the Los Altos Parklet Program:

- Two parklet design standards for all restaurants to create a common aesthetic unique to Los Altos.
- Dining area will be protected with 500-pound wine barrels maximum of 7.5 feet apart.
- Allow multiple parklets on the same block and adjacent from one another.



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- Allow parklets to expand in front of neighboring businesses with prior approval.
  - Require a one-time application fee and subsequent annual renewal fee.
  - Increase the expectations for high-level aesthetics in the parklet through increased design guidelines.
  - Program is approved indefinitely, but each individual parklet will require an annual administrative renewal with staff.
  - Restaurants must provide insurance and sign indemnification waiver protecting the City.

This program would go into effect at the conclusion of the local emergency declaration to give restaurant owners adequate time to submit their new application submittal documents. City staff will conduct an initial application review and on-site inspection along with regular checks to verify that the parklets are being maintained and comply with the Program Guide and applicable code requirements.

### Options

- 1) City Council approves the Los Altos Parklet Program that will go into effect at the conclusion of the local emergency order and approve the initial parklet program fees outlined in this document.

**Advantages:** Restaurants will be able to continue outdoor dining in the public right-of-way downtown.

**Disadvantages:** Continued change in use for some on-street parking spaces.

- 2) City Council does not approve the Los Altos Parklet Program that will go into effect at the conclusion of the local emergency order.

**Advantages:** Recover some on-street parking spaces currently used in parklet program.

**Disadvantages:** No outdoor dining parklets, creating a potential hardship or slowing the economic recovery for restaurants.

- 3) City Council may opt to make no changes to the current regulations approved in 2019 and create a permanent program based upon those guidelines.

**Advantages:** Restaurants will build deck-like parklets to expand their outdoor dining operations.

**Disadvantages:** Loss of some on-street parking spaces and limit parklets to the frontage of each restaurant.



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The parklets would not have the safety barrier protection offered by the 500-lb wine barrels in the COVID Parklet Program. It is likely fewer restaurants would participate under the rules established initially as was the case when the program was first announced.

**Recommendation**

The staff recommends Option 1.





# City of Los Altos Parklet Program Guide

November 2021

## **Description**

This program guide describes the procedures downtown restaurant owners that would like to install parklets in adjacent public parking spaces must follow to be granted permission to use the public right of way. These restaurant owners must present a complete submittal with all required documents and the initial application fee.

Subsequently, all parklet agreements terminate December 31 every year so each restaurant will need to provide a new signed copy of the application, signed permit agreement, updated insurance documents, and fee. City staff will complete an annual inspection to verify that the aesthetics and cleanliness of the parklet are maintained to the high standard expected. Any inspections performed by the City are for its sole and exclusive benefit and for the benefit of the general public, and a restaurant owner should not rely on the fact that the City has performed an inspection as evidence that the restaurant's parklet is safe or compliant with applicable accessibility standards including but not limited to the Americans with Disabilities Act Accessibility Standards and Chapter 11B of the California Building Code, Los Altos Municipal Code, or other applicable laws.

The City of Los Altos will evaluate the parklets on a regular basis to ensure that they are being properly utilized and regularly maintained by the applicant and compliant with all pertinent rules and regulations. The City of Los Altos reserves the right to alter conditions of approval or to revoke a permit for an individual parklet at any time and for any reason in its sole and absolute discretion.

# Design Specifications

The parklets are required to meet the following specifications, which may be updated by the City from time-to-time:

## Location

- Be located within the parking space within the frontage of the projected property lines where the business is located. Use of any parking spaces within the frontage of another business is allowed with that business owner's written support and the City's approval.
- Maintain a minimum distance from the centerline of the street to the most outer edge of the parklets barriers to enable safe flow of vehicular traffic (i.e., 10-feet on State St. and 11-feet on Main St.)
- Not cover utility access panels or storm drains.
- Demonstrate the parklet does not interfere with storm water drainage or create flooding.

## Barriers

- Utilize wine barrel barriers that weigh at least 500 pounds to enclose the parklet space on all sides, except the sidewalk, and only allow people to enter and exit the parklet via the sidewalk.
- Connect the wine barrels with items that are substantial, not easily movable, and of high quality, such as a fence, stained wood, two strands of at least 1" thick rope, hardscape, or planters.
- All parklets shall be constructed to meet the following requirements in Figures 1 and 2, at a minimum, with regards to wine barrel spacing along the perimeter of the parklet.

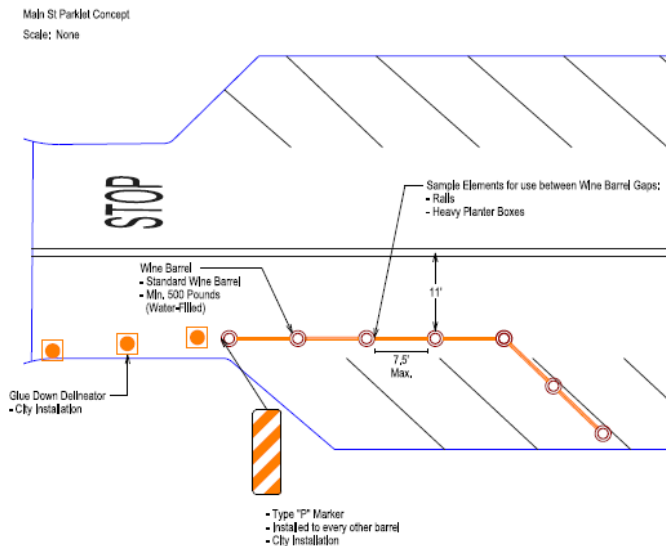


Figure 1. Typical layout plan for a 3-angled parking stall wine barrel parklet on Main Street.

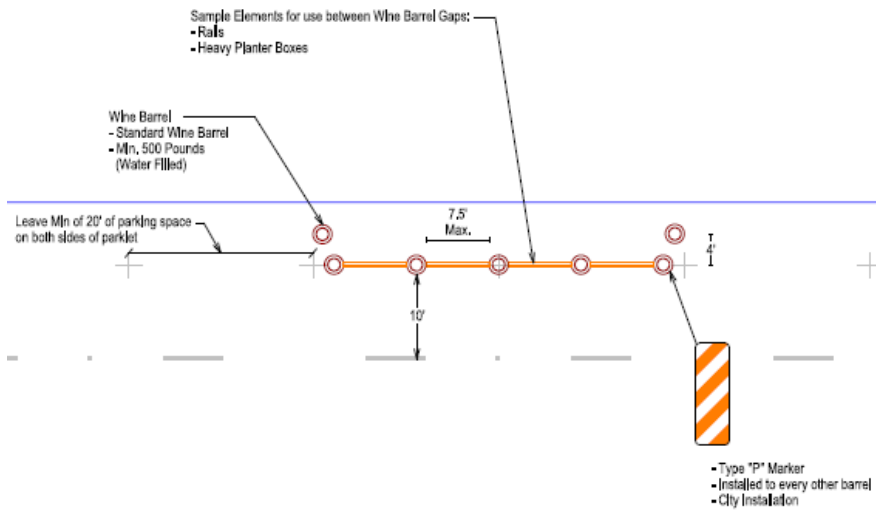


Figure 2. Typical layout plan for a 2-parallel parking stall wine barrel parklet on State Street

### **Accessibility**

- Provide access to and throughout the seating areas by meeting the minimum requirements for accessibility based on the Americans with Disabilities Act 2010 Accessibility Standards, the current California Building Code (CBC), Chapter 11B – Accessibility, as well as other applicable standards and guidelines. A restaurant owner is strongly encouraged to engage the services of a Certified Access Specialist. The City does not guarantee that a parklet designed in accordance with City standards will comply with applicable disability access laws.
- Maintain at least a 5' wide minimum clearance along the sidewalk to provide an accessible route along the existing public right of way.
- All restaurants must install bright tape that will warn customers about the curb line.
- 5% of all outdoor seating to be accessible and identify all of the accessible tables with the International Symbol of Accessibility.
- Comply with CBC 11B-303.5 to provide edge protection in the form of a railing or warning curb if the drop off to the adjacent grade is greater than 4".
- Provide the specific requirements for accessible routes leading to and through the parklets including clear width, slope, cross slope, vertical transitions, protruding object/headroom hazards, and openings along the circulation path.

### **Lighting**

- All outdoor lighting or electrical appliances used outdoors must be rated for outdoor use.
- Ensure adequate lighting is provided to ensure good visibility for people within the parklet as well as nearby pedestrians and motorists moving past the parklet.
- Lighting shall be LED.

- Lighting and power sources shall be installed in accordance with state and local electric code requirements and manufacturer's instructions and not create obstructions or tripping hazards.
- All electrical lighting, and electric appliances placed outside must be listed for outdoor use and must be heavy duty type with sufficient capacity to safely carry the electric load and plugged into weather-rated GFCI receptacles.
- All electrical connections must be connected to an outlet directly; extension cords are prohibited.

### **Heating**

- Heat lamps shall meet fire and municipal code requirements.
- Heating appliances shall not be located within 5 feet of exits or exit discharges of tents, canopies, and membrane structures.
- Heaters must be secured and stabilized to prevent tipping over.
- Heaters shall be placed on flat surfaces. Heaters shall not be placed on sloped surfaces.
- Heaters are not allowed within tents or canopies.
- No fuel-based heating or lighting appliances or generators are allowed within 20 feet of tents or umbrellas.

### **Tent (or Canopies)**

- Tents will be reviewed on a case-by-case basis by City staff and the City reserves the right to approve or deny individual tents separately from the parklet process.
- Tents must be made of a high-quality cloth material that must be cleaned on a monthly basis.
  - Tent color must be green, brown, or gray.
  - Tent material must be approved by City staff prior to installation.
- Tents shall not be located within 20 feet of buildings, lot lines, parked vehicles.
- Tents shall have a headroom clearance of 80" minimum high.
- Certificate of Flame Resistance for tent and canopy fabrics or materials used is required and must be displayed.
- Tents shall not impact sight distances for vehicles, cyclists, and pedestrians. Tents shall not be secured directly into the ground or sidewalk.
- If there are no manufacturer's specifications available for wind resistance, the tent structure shall be designed by a California Professional Engineer to verify that the tent will be secured in place. Tents may be secured to weighted wine barrels to resist wind if the design complies with the tent manufacturer's guidelines or a Professional Engineer's design.
- No cooking in tents and canopies.
- Must comply with [California Fire Code](#).

### **Umbrellas**

- Secure umbrellas down with umbrella stand.

- Umbrellas shall have a headroom clearance of 80” minimum high.
- Umbrellas shall be closed when the business is not serving patrons.
- No fuel-based heating or lighting appliances or generators are allowed within 20 feet of umbrellas.

**Other requirements**

- Demonstrate that the parklet is regularly used by customers and maintained by the restaurant owner.
- Abide by all other restrictions placed by the City of Los Altos not outlined in this guide.



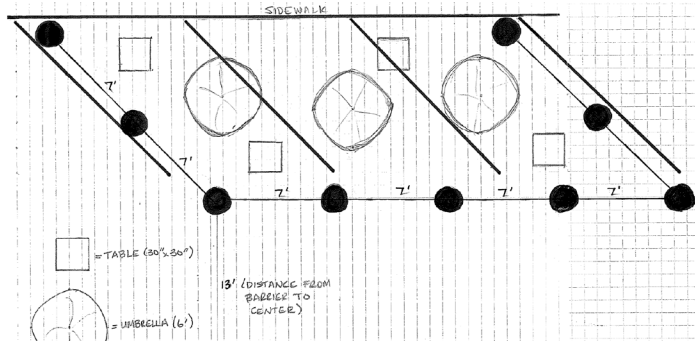


Figure 4. Diagram example of an existing parklet.

## Option 2: Deck Parklets

This option allows restaurant owners to build a quality deck structure that will be surrounded by wine barrels. These parklets must meet the requirements above, but will need to provide additional drawings that clearly articulate the specifications for the deck-like structure. Below is an example of a drawing presenting all the necessary specifications and a rendering of a potential deck-like structure.

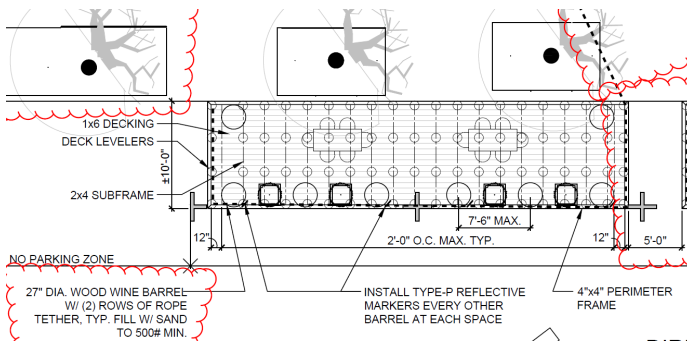


Figure 5. Schematic drawing of deck parklet.



Figure 6. Rendering of deck parklet.



## **Submittal Fee**

Applicants must submit a one-time initial application fee of \$500 approved by City Council to cover the cost for application review, City inspections, and the subsequent installations by City staff.

By every December 31<sup>st</sup>, in alignment with the business license and downtown parking permit deadlines, applicants will need to provide a new signed copy of the application, signed permit agreement, updated insurance documents, and a check for the Council-approved fee.

The annual parklet renewal fee will start at \$100 for the 2023 calendar year. After the initial approval, the annual parklet renewal fee shall increase per City Council direction in the Los Altos Fee Schedule.

## **Submittal Requirements**

- Completed copy of the Los Altos Parklet Program Application in Appendix A
- Detailed timeline to install parklet
- Plans for the proposed parklet project, including the parking spaces proposed for the parklet, selection of the desired option, description and schematic of the objects proposed for the barrier gaps, a table and canopy layout schematic, and a lighting and power plan that includes details of the wiring and power source
- Disability access plan<sup>1</sup>
- Letter(s) of support from the adjacent or nearby businesses for the parklet to expand into the parking spaces in their frontage
- Signed copy of the Agreement and Permit in Appendix B
- Proof of insurance

Please submit all the above required documents to the City of Los Altos for review through email to [acarnesecca@losaltosca.gov](mailto:acarnesecca@losaltosca.gov) or by mail to:

Economic Development Department  
City of Los Altos  
1 N. San Antonio Road  
Los Altos, CA 94022

Every applicant is required to schedule an on-site meeting with a City staff representative prior to submitting an application. If you have any questions regarding the parklets or parklet application process, please contact the City of Los Altos Economic Development team at (650) 947-2620 or [acarnesecca@losaltosca.gov](mailto:acarnesecca@losaltosca.gov).

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<sup>1</sup> The City is not responsible for determining whether the disability access plan complies with the Americans with Disabilities Act or other applicable disability access laws. Every restaurant owner that participates in the parklet program is strongly encouraged to engage the services of a Certified Access Specialist.

## Appendix A

### Los Altos Parklet Program Application

# Los Altos Parklet Program Application

## Business

Name: \_\_\_\_\_

Business type: \_\_\_\_\_ Business license number: \_\_\_\_\_

Physical address: \_\_\_\_\_

Number of parking spaces to be occupied by parklet: \_\_\_\_\_

Encroachment in front of neighboring business?  Yes  No

Option 1: Street-level Parklets  Option 2: Deck Parklets

## Business Owner

Name: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Property Owner

Name: \_\_\_\_\_

Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Attached Documents Checklist

- Detailed timeline to install parklet
- Plans for the proposed parklet project, including the parking spaces proposed for the parklet, schematic of the objects proposed for the barrier gaps, a table and canopy layout schematic, and a lighting and power plan that includes details of the wiring and power source
- Disability access plan
- Letter(s) of support from the adjacent businesses for the parklet to expand into the parking spaces in their frontage (if applicable)
- Signed copy of the Agreement and Permit in Appendix B
- Proof of insurance

## For City/County Use Only

Economic Development Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Engineering Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Building Approval: \_\_\_\_\_ Date: \_\_\_\_\_

County Fire Approval: \_\_\_\_\_ Date: \_\_\_\_\_

## Appendix B

### Los Altos Parklet Program Permit and Agreement

**City of Los Altos**  
**Parklet Program Permit and Agreement**

This PARKLET PROGRAM PERMIT AND AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 202\_\_ (the "Effective Date"), by and between the City of Los Altos (the "City") and \_\_\_\_\_ ("Permittee") with respect to the following facts:

- A. Permittee operates a dining facility within the City.
- B. To facilitate outdoor dining, Permittee desires to locate displays, furniture, and other property ("Outdoor Property") in front of Permittee's dining facility in parking spaces within the public right-of-way (the "ROW").
- C. The City desires to grant Permittee the privilege of using the ROW on terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Permittee may locate outdoor dining furniture within the ROW subject to the requirements of the City's Parklet Program Guide, which may be amended at any time by the City in its sole and absolute discretion with or without notice. The precise location and arrangement of such outdoor dining furniture shall be in accordance with the approved plans submitted by Permittee with its application for this Agreement, as shown for reference in **Exhibit A** hereto. City staff may, from time to time in their sole and absolute discretion, require changes to these approved plans as may be necessary or conducive to the health, safety, or convenience of the general public.
- 2. Permittee's use of the ROW pursuant to this Agreement is conditioned as follows:
  - a. Permittee shall comply with all applicable laws in its operations under this Agreement, including, without limitation, the Americans with Disabilities Act and other applicable disability access laws.
  - b. Permittee shall hold harmless, indemnify, and defend (with counsel reasonably acceptable to the City) the City, its elected and appointed officers, agents, employees, and volunteers from all damages, costs, and expenses whatsoever in law or equity (including, without limitation, reasonable attorneys' fees), arising from Permittee's operations under this Agreement, unless caused by the City's own gross negligence or willful misconduct. Without limiting the generality of the foregoing, Permittee's indemnification and defense obligations extend to, (i) claims for any property damage or personal injury arising from an alleged dangerous condition of any public property used by Permittee in its operations under this Agreement; (ii) claims for any property damage or personal injury arising from any condition of public or private property created or maintained by Permittee in connection with its operations under this Agreement; and (iii) claims under the Americans with Disabilities Act or other applicable disability access laws that arise in connection with Permittee's operations under this Agreement. The obligations under this Paragraph shall survive the termination of this Agreement.
  - d. Permittee shall obtain and maintain insurance in amounts and on such terms and conditions as set forth in **Exhibit B** hereto.
  - e. Permittee shall not cause or allow its Outdoor Property to cause any public or private nuisance or otherwise to result in any adverse effect on nearby public or private property. Such

Outdoor Property, including any railings or similar enclosures, shall be appropriately designed, executed, and maintained to be complementary to the appearance and operation of the surroundings. Outdoor Property shall be made generally from metal or wood, but not from plastic. Signs shall be limited to restaurant menu boards and shall not simply advertise a business address or phone number.

- f. Permittee shall keep the ROW and Permittee's Outdoor Property in a neat, clean, safe, and sanitary condition, free from debris and food and drink stains.
3. Permittee expressly agrees and understands that the City has no duty to ensure that Permittee's operations will comply with applicable laws. If the City does or has done anything to ensure that Permittee's operations will comply with any applicable laws, including, without limitation, the Americans with Disabilities Act or other disability access laws, it is agreed and understood that the City has done so exclusively for its own benefit and for the benefit of the general public, and Permittee shall not rely thereon. Permittee is encouraged to have its operations under this Agreement inspected by a certified access specialist.
4. This Agreement constitutes a nonexclusive license and may be revoked at any time by the City with or without cause and without prior notice. Permittee acknowledges that by entering into this Agreement and by making use of the ROW, Permittee is not acquiring any estate whatsoever in the ROW or any other public property.
5. Unless terminated sooner by the City, this Agreement shall terminate on December 31, 202\_\_\_. This Agreement shall also terminate automatically if Permittee ceases its restaurant operations at the subject location for a period of 30 days or more. Unless the City in its sole and absolute discretion agrees to enter into a subsequent permit and agreement with Permittee for use of the ROW, immediately upon the termination of this Agreement Permittee shall remove its Outdoor Property from the ROW and shall cease its use of the ROW for outdoor dining.
6. A breach by Permittee of the terms and conditions of this Agreement shall constitute both a breach of contract that may be enjoined by a court of competent jurisdiction and a public nuisance that may be abated pursuant to Part 3 of Division 4 of the California Civil Code and Chapter 11.10 of the Los Altos Municipal Code. These remedies shall be cumulative of all other remedies available to the City at law or in equity. The City shall be entitled to recover from Permittee any attorneys' fees, legal costs, or other expenses incurred in enforcing this Agreement.
7. PERMITTEE ACCEPTS THE USE OF THE ROW **AS-IS**. THE CITY MAKES NO REPRESENTATION WHATSOEVER ABOUT THE SUITABILITY OF THE ROW FOR THE USES ALLOWED UNDER THIS AGREEMENT. IN CONSIDERATION OF THE CITY'S WILLINGNESS TO ALLOW PERMITTEE TO USE THE ROW, PERMITTEE EXPRESSLY ASSUMES ALL RISK OF LOSS OF EVERY KIND AND NATURE ARISING FROM OR IN CONNECTION WITH SUCH USE.
8. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be modified without the City's written consent. No waiver of this Agreement shall be valid unless in writing, and no waiver shall operate as a continuing waiver. There are no third-party intended beneficiaries of this Agreement. This Agreement may be signed in counterparts, each of which shall be deemed an original. Electronic signatures may be used in place of original signatures.
9. It is agreed and understood that the paramount purpose of this Agreement is to protect the City and its taxpayers from liability in connection with Permittee's operations under this Agreement. Any ambiguity in this Agreement shall be construed in the manner that best achieves its

purposes, and this Agreement shall not be construed against its drafter. This Agreement shall be of no further force or effect if any obligation of Permittee hereunder is found by a court of competent jurisdiction to be invalid or unenforceable. Notwithstanding the forgoing, and to the maximum extent allowed under applicable law, if any provision of this Agreement is found by a court of competent jurisdiction to be void or unenforceable, Permittee's indemnification, defense, and insurance obligations hereunder shall nonetheless be fully enforceable and shall survive the termination of this Agreement. It is further agreed and understood that this Agreement confers an encroachment permit on Permittee, and this Agreement shall be construed not only as a contract, but also as a regulatory permit. Any fees paid in connection with this Agreement have been paid to defray the cost of permit processing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

PERMITTEE

CITY

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_



**EXHIBIT A**  
**APPROVED LAYOUT PLAN**

**EXHIBIT B**  
**INSURANCE PROVISIONS**

Permittee shall provide its insurance broker(s)/agent(s) with a copy of this Agreement, including this Exhibit B, and shall request that certificates of insurance and required endorsements be provided to: **Economic Development Manager, City of Los Altos, 1 N. San Antonio Road, Los Altos, CA 94022.** Coverage shall be at least as broad as follows:

**Commercial General Liability.** Commercial General Liability (“CGL”) insurance, or its equivalent, with limits no less than One Million Dollars (\$1,000,000) **per occurrence**. Insurance shall be placed with a carrier with a current A.M. Best rating of no less than A-VII. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit.

**Additional Insured Status.** The CGL policy shall be endorsed to name the City, its elected and appointed officers, agents, employees, and volunteers as additional insureds with respect to any liability arising in connection with Permittee’s operations under this Agreement, including but not limited to liability arising out of death, injuries, or damage to persons or property in connection with this Agreement.

**Notice of Cancellation.** Permittee is responsible to provide notice within thirty (30) days before the expiration of the above policy to the City should any policies be cancelled.

**Verification of Coverage.** Permittee shall furnish City with certificates and endorsements affecting coverage required by this Exhibit. All certificates and endorsements must be received and approved by the City before Permittee may exercise any rights under this Agreement. However, failure to obtain the required documents prior to the work beginning shall not waive Permittee’s obligations to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances.** The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.