

## ORDINANCE NO. 1166

### AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING TITLE 7 (PUBLIC WORKS) OF THE SAN ANSELMO MUNICIPAL CODE ADDING CHAPTER 14 "PARKLETS"

**WHEREAS**, parklets repurpose public space, such as on-street parking, into areas that allow use by local restaurants and retail businesses, and also provide public community space; and

**WHEREAS**, in response to the Covid-19 pandemic, the Town implemented a temporary Outdoor Activities Program that authorized temporary outdoor dining and retail activities in public spaces, including approving the development of temporary parklets in on-street parking locations based on specified development and safety requirements; and

**WHEREAS**, parklets have allowed Town businesses to continue to operate in a safe manner during the Covid-19 pandemic by providing a space for outdoor dining and retail activity; and

**WHEREAS**, parklets have also increased pedestrian activity in the downtown, and have played an important role in activating and enlivening the downtown and other commercial areas; and

**WHEREAS**, based on the success of the Town's temporary parklet program, the Town Council wishes to allow for permanent parklet installations pursuant to the ordinance amendment herein (the "Parklet Ordinance") and consistent with Parklet Guidelines; and

**WHEREAS**, A copy of the public hearing notice for this item was published in the *Marin Independent Journal* newspaper; and

**WHEREAS**, the Town Council held a duly noticed public hearing on September 13, 2022 to consider the Parklet Ordinance; and

**WHEREAS**, the Town Council finds and determines that the Parklet Ordinance is in the public interest as it will encourage pedestrian activity in the downtown area, enliven and activate the downtown, and support local business and public activity; and

**WHEREAS**, the Town Council finds that the Parklet Ordinance is consistent with the goals and policies of the Town's General Plan to preserve, maintain, and enhance the character and quality of life in San Anselmo; and is consistent with the Town's Climate Action Plan since it will encourage pedestrian use of the downtown area and utilize outdoor spaces.

**NOW, THEREFORE**, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

**SECTION 1:** Environmental Review. The Town Council finds and determines that adoption of the Parklet Ordinance is categorically exempt from the California Environmental Quality Act

("CEQA") pursuant to CEQA Guidelines section 15301(c), as a minor alteration to existing public or private facilities involving negligible or no expansion of existing use.

**SECTION 2:** The above recitals are true and correct and are incorporated as findings herein.

**SECTION 3:** A new Chapter 14 "Parklets" is hereby added to Town Municipal Code Title 7 "Public Works" as follows:

#### **Chapter 7.14 – Parklets**

**7-14-01 – Purpose.** The purpose of this chapter is to establish requirements for parklets within the public right-of-way, and to ensure for the public health, safety and welfare with respect to the use of such parklets.

**7-14-02 – Definitions.** As used in this chapter, the following definitions apply.

- (a) "Parklet" shall mean an area utilizing one or more on-street parking spaces and may include adjacent public walkways or other right-of-way areas, that combines elements such as seating, tables, landscaping, and lighting.
- (b) "Private parklet" shall mean a parklet designated for private commercial use such as dining or outdoor retail activity.
- (c) "Public parklet" shall mean a parklet designated for public use including community gathering and seating.

**7-14-03 – Encroachment Permit Required.** No person shall use or occupy the public walkway or other right-of-way for the establishment or use of a parklet without first obtaining an encroachment permit for parklet use as provided by this chapter and paying any required fees.

**7-14-04 – Encroachment Permit Application.** An application for an encroachment permit for a parklet use shall be submitted to the Department of Public Works on a form provided by the Public Works Director. Application submittal requirements are further detailed in the Parklet Guidelines and those reasonably required by the Public Works Director or his/her/their designee. Permits shall be subject to the review of the Public Works Director or his/her/their designee.

**7-14-05 – Fees.** A permittee for a private parklet shall pay all applicable fees as established by Town Council resolution including an application fee, an annual fee, and such other fees as may be established. There shall be no application fee or annual fee for a public parklet.

**7-14-06 – Bond.** Prior to the issuance of an encroachment permit for parklet use, the permittee shall post a bond with the Town to cover the cost of restoring the right-of-way or other public property to its original condition upon the removal of the parklet improvements. The bond amount shall be determined by the Town. On termination of the permit, the bond shall be

released upon restoration of the right-of-way or public property to the satisfaction of the Public Works Director.

**7-14-07 – Location.** Private parklets may be installed only in front of commercial businesses in zones designated commercial, along the curbside on public streets where on-street parking spaces exist. Public parklets may be installed in zones designated commercial, along the curbside on public streets where on-street parking spaces exist. Public parklets need not be located in front of commercial businesses, but must be located in commercial zones along the curbside on public streets where on-street parking is located. Parklets are limited to streets with a speed limit of 25 miles per hour or less, unless otherwise approved by the Public Works Director as safe on a case-specific basis.

**17-14-08 – Encroachment Permit for Parklet Use Form and Term.**

- (a) An encroachment permit for parklet use shall be in a form provided by the Public Works Director. Permits shall be issued for an initial period not to exceed two (2) years. Upon expiration, a new permit must be obtained on the basis of a new application or a renewal permit must be obtained. Notwithstanding anything in this section, an encroachment permit for parklet use may be terminated by the Town upon thirty days' notice of the Public Works Director per this chapter.
- (b) Each encroachment permit for parklet use shall be personal to the permittee, is not transferrable, delegable, or assignable. Any attempt to transfer, delegate, or assign such permit shall be void. In the event that the permittee is a business and there is a transfer of that business, the transferee shall obtain a new encroachment permit for parklet.

**17-14-09 – Insurance and Indemnification.**

- (a) The applicant shall, at its own cost and expense, procure and maintain in force policies of commercial general liability insurance with a combined single limit amount of at least one million dollars (\$1,000,000) per occurrence, or such other higher amount as determined by the Public Works Director, covering the applicant's operations in the parklet area as defined in the parklet area shown on the encroachment permit. Said insurance shall be procured from an insurer authorized to do business in California; shall be subject to the approval in writing from the Town; shall name the Town, its officers, officials, employees, and volunteers and the property owner as additional insureds; shall provide primary and non-contributory coverage to additional insureds; and shall contain a provision for thirty days' prior written notice of cancellation to the Town in accordance with policy terms and conditions. The applicant shall provide to the Town a current Certificate of Insurance along with the proper policy endorsements and/or policy language evincing the above-required insurance coverage and terms prior to development and operation of the parklet. Insurance required herein shall not be deemed to limit the permittee's liability.

- (b) An encroachment permit for parklet use under this chapter shall provide that the permittee shall defend, indemnify, and hold harmless the Town and its officers, agents, and employees free from any claims of injury, damage, loss or liability arising out of or in connection with the operation or condition of the parklet.

**17-14-10 – Parklet Standards.** In addition to complying with all requirements set forth in the Town’s Parklet Program Guidelines, all parklets shall comply with the following standards. The Public Works Director may require additional conditions for the location, design, and operation of the parklet in his/her/their discretion as consistent with chapter and the Parklet Guidelines.

- (a) The final approved parklet location shall be established by the Public Works Director based on the public safety issues of each specific location.
- (b) The minimum width of public walkway directly adjoining a parklet shall not be less than four feet (4’) and said parklet improvements must provide at least four feet (4’) of unobstructed area of public walkway.
- (c) Parklet improvements shall not be located in a manner or location that interferes with the flow of pedestrian, bicycle, or vehicle traffic; interferes with pedestrian, bicycle, or vehicle visibility, including interference with the visibility of a crosswalk, driveway, or other traffic control device or creates a potential threat to public safety as determined by the Public Works Director.
- (d) The parklet must comply all applicable American with Disabilities Act (“ADA”) requirements, and any similar local, state, or federal regulations, and must be accessible to persons with disabilities. Parklets shall not remove ADA accessible parking spaces unless the Public Works Director or his/her/their designee determines that comparable replacements can be installed, in which case permittee shall cover all costs associated with said replacement.
- (e) The parklet shall be operated in compliance with all applicable federal, state, and local laws. For purposes of compliance with Title 5 Chapter 10 of the San Anselmo Municipal Code “Single Use Food Service Ware”, Private Parklets shall be considered sites of on-premise consumption for the permittee.
- (f) All applicable Fire Department regulations, including but not limited to regulations regarding lighting, heating, and power, shall be met.
- (g) Parklet improvements shall be maintained in a good state of repair, and in a safe and sanitary condition.
- (h) Notwithstanding anything in this section, modifications to these standards may be approved by the Public Works Director or his/her/their designee if the modifications are consistent with the public health, safety, and welfare.
- (i) All applicable building permit requirements must be satisfied.
- (j) Parklet improvements shall not interfere with any public utilities including storm water drainage, fire hydrants, transit stops, utility-hole covers, or public utility valves/covers.
- (k) An encroachment permit for parklet use shall specify the area of allowed use on an exhibit approved by the Public Works Department attached to the permit.

**17-14-11 – Public Parklet Requirements.** A public parklet must be maintained open for public use and may contain improvements subject to approval pursuant to this chapter that include, but are not limited to, seating, tables, bicycle parking, and landscaping. A public parklet must contain Town-designated signage positioned at either end of the parklet indicating that the space is open for general public use. Private restaurant or retail business activity, including food and drink service, may not occur in a public parklet. Hours of use are subject to the approval of the Public Works Department or his/her/their designee.

**17-14-12 – Enforcement and Emergency Action**

- (a) The Public Works Director or his/her/their designee may deny a permit application, or revoke or suspend the permit in his/her/their discretion pursuant to this section if it is determined that the provisions of this chapter and/or the provisions of the Town's Parklet Program Guidelines are not satisfied; if the conditions in the associated encroachment permit or other agreement have been violated; or the operation or condition of the parklet constitutes a public nuisance pursuant to the San Anselmo Municipal Code or state law.
- (b) Notice of a violation shall be made in writing to the permittee by the Public Works Department. If the violation is not cured within ten (10) days after issuance, the Public Works Director or his/her/their designee may revoke or suspend the permit. The Public Works Director or his/her/their designee may immediately revoke the permit of any permittee who has committed three violations within a twelve (12) month period.
- (c) When the operation or condition of a parklet constitutes an immediate hazard or threat to the safety of persons or property, the Town reserves the right to immediately abate the hazard, which may include, but is not limited to, dismantling or removing parklet improvements in whatever manner the Town chooses to address the emergency and the Town assumes no responsibility for returning the parklet to its original condition. Prior to taking such action, the Town shall make a reasonable attempt under the circumstances to contact the permittee to address the emergency, if conditions allow.
- (d) A violation of this chapter and/or the provisions of the Town's Parklet Program Guidelines constitutes a public nuisance and may be enforced as such under San Anselmo Municipal Code Title 1, chapter 2, and any other applicable local or state law. A violation of this chapter and/or the provisions of the Town's Parklet Program Guidelines is subject to the administrative penalty provisions of San Anselmo Municipal Code Title 1, chapter 6. The Town's remedies are cumulative.

**17-14-13 – Restoration and Removal of Parklet.** Upon termination of an encroachment permit for parklet use, the permittee shall remove at its own expense, all improvements, personal property, furnishings, and equipment associated with the parklet within a reasonable time as established by the Town Public Works Director or his/her/their designee. All outdoor barriers shall be removed and the sidewalk and right-of-way returned to its original condition. Any personal property remaining in the parklet area shall be removed and disposed of by the Town

pursuant to the laws of the State of California. The permittee shall reimburse the Town for all expenses incurred in removing any remaining improvements or restoring the property, including reimbursement for costs and attorneys' fees as applicable.

**17-14-14 – Temporary Continuation of Existing Parklet Use.** Any permittee who has received a Temporary Outdoor Activities Permit pursuant to the Town's Outdoor Activities Program, developed in response to the Covid-19 pandemic, may continue to operate under the conditions of the temporary permit for an additional twelve (12) months from the effective date of this Ordinance, after which point, any party who wishes to continue with the parklet use may apply for an encroachment permit for parklet use pursuant to the San Anselmo Municipal Code and the requirements of this chapter.

**17-14-15 – Interpretation.** Where there are conflicting requirements between this chapter, the Parklet Guidelines, and/or other provisions within the Town Municipal Code, the provisions of the Parklet Ordinance and the Parklet Guidelines shall control, unless the conflict involves public health, sanitation, or safety issues in which case the Town Municipal Code will control.

**SECTION 5:** Severability. The Town Council hereby declares every section, paragraph, sentence, clause, and phrase is severable. If any section, paragraph, sentence, clause or phrase of these ordinance amendments are for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

**SECTION 6:** Effective Date. This Ordinance Amendment shall go into effect thirty (30) days from its adoption and shall be posted or published as required by state law.

**THE FOREGOIG ORDINANCE** was introduced at a regular meeting of the San Anselmo Town Council on September 13, 2022, and was adopted at a regular meeting of the San Anselmo Town Council on September 27, 2022 by the following by the following vote:

**AYES: Fineman, Burdo, Burke, Greene, Colbert**

**NOES: None**

**ABSTAIN: None**

**ABSENT: None**

**RECUSED: None**

**APPROVED:** \_\_\_\_\_  
Alexis Fineman, Mayor

**ATTEST:** \_\_\_\_\_  
Town Clerk