

ORDINANCE NO. 808

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILLBRAE
ADDING CHAPTER 8.75, "PERMIT REQUIRED FOR PARKLETS", OF TITLE 8,
"PUBLIC WORKS", OF THE MILLBRAE MUNICIPAL CODE, FOR THE
INSTALLATION AND MAINTENANCE OF PARKLETS IN THE PUBLIC RIGHT-OF-
WAY**

WHEREAS, on March 19, 2020, the City of Millbrae City Council adopted Resolution No. 2020-18 proclaiming the existence of an emergency and a local emergency within the City in response to the COVID-19 outbreak; and

WHEREAS, during the COVID-19 State of Emergency, the City of Millbrae adopted Urgency Ordinance No. 778 and Resolution No. 20-37, allowing restaurants to provide temporary outdoor dining services in the public right-of-way; and

WHEREAS, outdoor dining helped restaurants continue operating during the State of Emergency as a means to offer food service with a lower risk of spreading infection to customers and employees; and

WHEREAS, on February 28, 2023, the COVID-19 State of Emergency formally ended and the City elected to move forward with the development of a parklet program; and

WHEREAS, on June 8, 2023, the parklet guidelines were introduced to, and reviewed by, the Economic Vitality Advisory Committee (EVAC) which then provided feedback to staff on the parklet program; and

WHEREAS, on July 17, 2023, the Planning Commission reviewed and provided input on the parklet program guidelines and recommended staff set a reasonable cost for the permit fee to not discourage businesses from applying, allow a new business to acquire an existing parklet, and ensure parklets are actively maintained for cleanliness and safety; and

WHEREAS, on September 13, 2023, the City engaged the community by hosting an outreach meeting to receive feedback from business owners and residents; and

WHEREAS, some business owners and members of the public were in attendance and expressed concerns that the lack of parking hinders their business and any vacant parklets should be removed to allow for more parking availability; and

WHEREAS, on September 26, 2023, the City Council held a study session to review and provide direction on the development of a parklet ordinance and parklet guidelines; and

WHEREAS, the proposed Millbrae Municipal Code Chapter 8.75 will regulate and provide a set of standards for the installation or maintenance of parklets in the public right-of-way within the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MILLBRAE, CALIFORNIA ORDAINS THAT:

SECTION 1: ADDING CHAPTER 8.75 "PERMIT REQUIRED FOR PARKLETS" TO THE MILLBRAE MUNICIPAL CODE, TITLE 8 "PUBLIC WORKS."

Millbrae Municipal Code Title 8 Public Works, is amended by adding Chapter 8.75 "Permit Required for Parklets" to read as follows:

**Chapter 8.75
PERMIT REQUIRED FOR PARKLETS**

Sections:

8.75.010	Purpose and Intent
8.75.020	Definitions
8.75.030	Administration
8.75.040	Applicability
8.75.050	Parklet permit requirements
8.75.060	Minimum approval requirements
8.75.070	Parklet permit review process and applicable standards
8.75.080	Parklet permit approvals and denials and notices
8.75.090	Standard conditions of approval
8.75.100	Permits
8.75.110	Revocation of permit
8.75.120	Violations
8.75.130	Appeals
8.75.140	Attorneys' fees

8.75.010 Purpose and Intent.

The purpose and intent of this chapter is to reasonably regulate and provide a uniform and comprehensive set of standards and requirements for the orderly development, siting, installation, construction, operation, maintenance, and removal of parklets in the public right-of-way. This chapter seeks to protect public health, safety, and general welfare, and preserve the city's character and aesthetic quality.

8.75.020 Definitions.

As used in this chapter, the following words and phrases have the following meanings, unless otherwise specified:

- A. "City" means the city of Millbrae.
- B. "City manager" means the city manager of the city, or the city manager's authorized representative.
- C. "Director" means the director of public works or their authorized designee.
- D. "Department" means the department of community development of the city or its authorized representative.
- E. "Owner" means the owner of the business associated with the parklet.
- F. "Parklet" means a temporary sidewalk extension installed on public parking space(s) within the public right-of-way, that provides more space and amenities for outdoor dining operated and maintained by the business establishment conducting the outdoor dining. The amenities may include tables, chairs, umbrellas, and other items for the consumption of food and beverages served by the restaurant or food or beverage service use.
- G. "Parklet program" means the uniform and comprehensive set of standards and requirements for the orderly development, location, design, installation, construction, operation, maintenance, relocation, and removal of parklets, as adopted by resolution of the city council.
- H. "Permittee" means a person who has been issued a permit pursuant to this chapter, that person's successor in interest, or any other person lawfully using such permit.

8.75.030 Administration.

The director is responsible for administering this chapter and establishing rules and regulations, in addition to any city council adopted rules or regulations, for this purpose. All such rules and regulations must be in written form and posted on the city's website or otherwise made publicly available to prospective applicants. As part of the administration of this chapter, the director may:

- A. Interpret the provisions of this chapter;
- B. Establish reasonable rules and regulations, which may include, without limitation, regular hours for appointments with applicants, as the director deems necessary or appropriate to organize, document and manage the application intake process;
- C. Develop and implement standards and procedures governing the placement and modification of parklets consistent with the requirements of this chapter;
- D. Develop, publish and from time-to-time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the director finds necessary, appropriate or useful for processing any application governed under this chapter;

E. Determine the amount of and collect, as a condition of the completeness of any application, any fee established for permits governed under this chapter established in the master fee schedule;

F. Establish deadlines for submission of information related to an application;

G. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

H. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and

I. Take such other steps as may be required to timely act upon applications for placement of parklets, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

8.75.040 Applicability.

This chapter applies to all applications to construct, install, operate, modify, reconstruct, remove, or otherwise provide for parklets within the public right-of-way.

8.75.050 Parklet permit requirements.

A. Parklet permit required. Any applicant seeking to construct, install, modify, maintain, or engage in an activity relating to a parklet in, on, under, or above the public right-of-way that is subject to this chapter, must obtain a parklet permit pursuant to the requirements of this chapter prior to conducting any work related to such parklet. Minor maintenance within the limits of a permitted constructed parklet by the owner or operator for normal maintenance of the parklet will not require an encroachment permit.

B. Permit application form. The applicant must submit a complete parklet permit application in a form approved by the director, which may be updated from time to time. The application will not be considered complete unless submitted in accordance with the requirements of this chapter and the parklet program. Applicants must pay a permit application processing fee, as set by the city's master fee schedule, at the time the application is submitted.

C. Applicant. The applicant of any parklet must be either: (1) the property owner(s) of the property adjacent to the parklet; or (2) the owner(s) of the restaurant or food service use which the parklet is directly utilized by for the purposes of outdoor dining.

D. Business owner authorization. If the business owner(s) is not the applicant, the written consent of the business owner(s) authorized to make decisions on behalf of the property is also required in the permit application.

8.75.060 Minimum approval requirements.

All parklets in the public right-of-way must:

A. Comply with all applicable city, state and federal laws and regulations including the Federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), California Building Code, and all applicable health and safety requirements, and as these laws and regulations may be amended or superseded;

B. Be designed, modified, and maintained to minimize impacts on the surrounding community, including, but not limited to, visual and noise impacts, impediments to access, and other impacts that would create a public nuisance or safety hazard;

C. Comply with the parklet program guidelines and any applicable administrative design standards adopted by the director.

8.75.070 Parklet permit review process and applicable standards.

A. The city may not approve any request for a parklet permit except upon a complete and duly filed application on the then-current form prepared by the city. The application must comply with this chapter and any other written rules and policies the city may adopt consistent with this chapter, including, but not limited to, parklet rules and regulations established by the director or adopted by the city council.

B. The director, community development director, fire marshal, and chief building official or their duly appointed designee(s) will review all applications for the parklet permit. The review process will ensure compliance with the parklet standards, and all other applicable laws.

C. Administrative design and engineering standards and application requirements. The director and director of community development may develop, and from time to time amend, administrative design and engineering standards and application requirements consistent with the generally applicable design regulations to clarify the aesthetic and public safety goals and standards in this chapter for city staff, applicants and the public. In the event that a conflict arises between the adopted parklet program and the administrative design and engineering standards adopted by the director, the parklet program will control.

8.75.080 Parklet permit approvals and denials and notices.

A. Decision. The director may approve, conditionally approve, or deny a complete application for a parklet permit.

B. Required findings. The director may approve or conditionally approve an application for a parklet permit when the director finds:

1. The proposed project meets the definition for a "parklet" as defined by this chapter;
2. The proposed parklet complies with all applicable requirements of this chapter;
3. The application is deemed complete by the director;
4. The proposed project complies with the parklet standards as determined by the director;
5. The applicant has demonstrated that the proposed project will be in compliance with all applicable health and safety regulations, which include, without limitation, the Americans with Disabilities Act;
6. The proposed parklet will not incommode the public use of the public right-of-way;
7. The proposed construction plan and schedule will not unduly interfere with the public's use of the public right-of-way; and
8. The applicant certifies that the proposed parklet complies with all federal and state standards and laws.

C. Conditional approvals. Nothing in this chapter is intended to limit the ability of the director to conditionally approve or deny without prejudice any application for a parklet permit as may be necessary or appropriate to ensure compliance with this chapter.

D. Decision notices. The director will notify the applicant and business owner(s) of the decision rendered on the parklet permit electronically through the city's online permitting system, by email, or by first class mail. The decision notice will include a stamped copy of the approved parklet plan as well as any associated conditions of approval.

E. No possessory interest. No possessory interest in the city's right-of-way is created by a parklet permit.

8.75.090 Standard conditions of approval.

The following conditions of approval will apply to all parklet permits approved under this chapter. The conditions of approval are in addition to the city encroachment permit general conditions, and any additional conditions of approval imposed by the director.

A. Permit fees. The permittee is subject to all applicable fees and charges for the issuance, operation, and renewal of a parklet permit, as established in the master fee schedule. The permittee or owner must pay all costs associated with the parklet installation, maintenance, and operation.

B. Parklet permit annual use of space fee. The permittee is subject to the parklet permit annual use of space fee established in the master fee schedule. This is an annual fee charged for the temporary private use of the city public parking space(s), as well as to cover the cost of annual city inspections for parklet condition and safety. Prior to the issuance of any permits, this annual fee must be paid in full for the current calendar year. Failure to pay the parklet permit annual use of space fee will result in revocation of the parklet permit.

C. Maintenance. Parklet permittees are required to maintain, at their sole expense, parklets in clean, safe, and accessible manner. The permittee is also responsible for paying all costs associated with the parklet installation, maintenance, repairs if damaged, and operation. The permittee must correct or repair the parklet within ten (10) days after the city's notice for corrective action; after which the city reserves the right to take any action it deems necessary, which may include revocation of any applicable permit(s) and removal of the installed parklet. Additionally, parklets that have not completed the required correction action after the city's ten (10) day notice, are deemed to be a public nuisance and may be summarily abated pursuant to MMC Chapter 6.25 and applicable state laws.

D. Inspection and reporting. The permittee under the parklet permit, when directed by the city, must perform an inspection of the parklet and submit a report to the director on the condition of the facility to include any identified concerns and corrective action taken or to be taken. The permittee is responsible for any costs associated with necessary actions performed by the city due to the permittee's failure to comply with this section and with the parklet program. The permittee has the burden to demonstrate compliance with this chapter.

E. Expiration. The parklet permit is null and void if construction is not substantially commenced within six months of the permit being granted.

F. Abandonment. Abandoned parklets must be removed by either the permittee or the owner of the business with which the abandoned parklet was associated, at the sole cost of the permittee or business owner, and to the satisfaction of the city. For the purposes of this chapter, a parklet is considered abandoned when it is no longer used by the permittee to provide outdoor dining or food or beverage service use for a period of sixty (60) days. It is the obligation of a permittee of a parklet not in active use to respond to any comments or notices issued by the city within thirty (30) calendar days of their transmittal by the city or the parklet will be considered abandoned.

G. Insurance. The permittee must obtain and maintain insurance in compliance with the city's encroachment permit general conditions.

H. Business license. The business utilizing the parklet is required to obtain and maintain a valid city business license at all times.

I. No smoking. "No Smoking" signs must be posted on the parklet premises in compliance with MMC Chapter 5.95.

J. No other signs, logos, or advertising are permitted within or on a parklet.

K. Nontransferable. Parklet permits are not transferable and a new parklet permit is required whenever the permittee is no longer associated with:

1. The business the parklet is assigned to; or
2. The insurance policy required under subsection G of this section.

L. Operational requirements. Parklets must be operated in accordance with all operational requirements established by any permit pertaining to the restaurant or food service establishment, including those required by other state and federal agencies, including the California Department of Alcohol Beverage Control.

M. Hours of operation. Parklet hours of operation may not be greater than the permitted hours of operation for the associated business. The director has the authority to decrease the parklet hours of operation.

N. Subletting of parklet. Parklets may not be sublet or assigned.

O. City maintenance activities and access. The city may need to access the space under, above or adjacent to the parklet that necessitates the temporary or permanent removal of the permitted parklet. Upon written notification, the permittee is responsible for removing the parklet at the permittee's sole expense. The permittee will be required to obtain an encroachment permit for the removal and, if the removal requirements are temporary, reinstallation work for the parklet. Under the master fee schedule, the director may waive the encroachment permit fee if the parklet removal is for the benefit of public work and access. If reinstallation does not commence within six (6) months after the permittee is authorized to reinstall the parklet, the parklet permit will automatically expire. Should the permittee fail to remove the parklet within the timeframe in the written notification from the city, the city may perform the removal work at the permittee's expense.

P. Emergency access. The city or other entities who have infrastructure within the public right of way, including their contractors and authorized agents, may need to access the space under, above or adjacent to the parklet in an emergency situation as determined in the sole discretion of the director, that necessitates removal or access to the permitted parklet without prior notification to the permittee. The city or any other entity acting in an emergency situation is not liable for damages caused to the parklet or from the loss of use of the parklet.

Q. Parklet discontinuance and removal. If the permittee or owner decides they no longer want to continue to maintain and operate a permitted parklet, the permittee or owner is responsible for notifying the department. The permittee or owner is responsible for removing the parklet at the permittee's or owner's sole expense. Immediately upon removal, the parklet area must be cleaned and restored to its previous condition to the satisfaction of the director.

8.75.100 Permits.

- A. Encroachment permit required. An encroachment permit is required to construct, install, or modify a parklet.
- B. Revocable encroachment permit required. A revocable encroachment permit is required to allow for the parklet to occupy the public right-of-way.
- C. Building permit may be required. A building permit may be required to construct a parklet.
- D. If the permittee sells or transfers ownership, the new owner must secure the transfer for the new encroachment permit within 30 days. An encroachment permit cannot be transferred or assigned without the written consent of the city. Ordinarily, the transfer of the permit would require the submittal of a new permit application to the city.

8.75.110 Revocation of permit.

Any permit or other authorized use of the public right-of-way granted under this chapter may be revoked or modified for cause in accordance with the provisions of this section.

- A. Revocation proceedings may be initiated by the director.
- D. Required findings. The director may revoke or modify the parklet permit if the director makes any of the following findings:
 - 1. The permittee obtained the approval by means of fraud or misrepresentation of a material fact;
 - 2. The business associated with the parklet is deemed to be a public nuisance or safety hazard;
 - 3. The parklet was expanded, altered or otherwise modified beyond what is set forth in the parklet permit or used in a manner substantially different than that listed in the permittee's parklet application;
 - 4. The restaurant or food establishment that the parklet serves has ceased to exist or has been suspended or abandoned.
 - 5. The permitted has failed to comply with any condition of a permit issued for the parklet;
 - 6. The permittee has failed to comply any requirement in this chapter and/or the parklet program;

7. The permittee failed to pay the parklet permit annual use of space fee;
8. The parklet interferes with a city project or activity;
9. The parklet interferes with vehicular or pedestrian use of the public right-of-way;
10. The parklet possess a public safety risk that cannot be mitigated or addressed with design changes or other modifications.

C. Notice of Action. The director will issue a written determination of revocation and mail the determination to the permittee or owner within ten calendar days of such determination.

D. Upon revocation, permittee or owner whose parklet permit or right has been revoked must remove the parklet at their sole expense. The director will have discretion in setting the timeframe of such removal.

E. A permittee or owner whose parklet permit or right has been revoked may have the revocation reviewed.

8.75.120 Violations.

Any violation of this chapter will be subject to the same penalties as a violation of the Millbrae Municipal Code Chapter [1.05](#), Penalty Provisions.

8.75.130 Appeals.

A. Appeals. Any person adversely affected by the decision of the director pursuant to this chapter may appeal the decision to the city manager. The city manager will issue a written decision that will be the final decision of the city.

B. Timing. All appeals must be filed within five (5) business days of the written decision of the director unless the director's decision provides an alternative appeal period. Appeals must be filed with the city clerk and accompanied by a filing fee in compliance with the city's master fee schedule.

8.75.140 Attorneys' fees.

In the event the city determines that it is necessary to take legal action to enforce any of the requirements under this chapter or to revoke a permit, and such legal action is taken, the permittee or property owner is required to pay any and all costs of such legal action, including reasonable attorneys' fees, incurred by the city, even if the matter is not prosecuted to a final judgment or is

amicably resolved, unless the city otherwise agrees in writing to a different fee arrangement with the permittee.

SECTION 2. SEVERABILITY. In the event any section, clause or provision of this Ordinance will be determined invalid or unconstitutional, such section, clause or provision will be deemed severable and all other sections or portions hereof will remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

SECTION 3. PUBLICATION. At least five (5) days prior to its adoption and within fifteen (15) days after its adoption, the City Clerk will cause a summary of the Ordinance to be posted in the City Clerk's office; posted on the City's website; and be published once in a newspaper of general circulation published in the County of San Mateo and circulated in the City of Millbrae.

SECTION 4. EFFECTIVE DATE. This Ordinance will be in full force and effect 30 days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Millbrae held on November 28, 2023.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Millbrae held on December 12, 2023.



MAYOR

ATTEST:



12/12/2023

CITY CLERK

I do hereby certify that the foregoing Ordinance was duly and regularly passed and adopted by the City Council of the City of Millbrae this 12th day of December 2023, by the following vote:

AYES: COUNCILMEMBERS: Schneider, Goodman, Fung, Cahalan, Papan

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

EXCUSED: COUNCILMEMBERS: None


12/18/2023
CITY CLERK