



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: May 3, 2022

TO: Christine Daniel, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Discussion and Possible Direction Concerning Making COVID Parklets Permanent

RECOMMENDATION

At the December 21, 2021 City Council meeting, Mayor Bauters requested, and received majority support for, a future agenda item to discuss making COVID parklets permanent in order to eliminate uncertainty and provide opportunities. In response, staff has prepared this report. Staff recommends that the Council discuss the information contained in this report and take action as listed below under "Conclusion".

BACKGROUND

In 2020, the City Council adopted two ordinances to address the impacts of the COVID-19 pandemic on Emeryville businesses. The first related to outdoor seating for restaurants and bars (the "COVID Outdoor Dining Ordinance") and the second related to other COVID-related activities (the "COVID-Related Activities Ordinance"). Both are described below. The first ordinance expired one year after its effective date, on August 6, 2021. The second ordinance is effective until 180 days after the expiration of the City of Emeryville's declared State of Emergency due to the COVID-19 pandemic.

COVID Outdoor Dining Ordinance. On June 16, 2020, in response to State and County orders prohibiting indoor dining due to the COVID-19 pandemic, the City Council passed urgency Ordinance No. 20-014, temporarily waiving or modifying certain provisions of the City's Planning Regulations related to outdoor seating for restaurants and bars during pandemic, as well as the first reading of a regular Ordinance No. 20-16 with the same provisions. On July 7, 2020, the City Council passed this ordinance on second reading. The regular ordinance took effect 30 days later, on August 6, 2020, at which point the urgency ordinance had no further force and effect. The regular ordinance was effective for one year, until August 6, 2021 (see Attachment 1).

Ordinance No. 20-016 waived or modified provisions of the Planning Regulations for Temporary Use Permits (TUPs), Sidewalk Cafes, and Parklets related to outdoor dining. For TUPs, the ordinance waived the time limit of 60 days for one-time uses, and instead

limited them to the duration of the ordinance. For Sidewalk Cafes, the ordinance waived the requirement to remove furniture at end of each day and the restriction on bars having sidewalk cafes, as long as full meals are served. For Parklets, the ordinance waived the restrictions on exclusive use by restaurants, table service, and alcohol service, and allowed bars to have Parklets with full meal service, similar to Sidewalk Cafes. The ordinance waived the requirement for Transportation Committee and City Council review and approval of Parklets, allowing staff to approve them, as they do all other Sidewalk Café permits. Finally, the ordinance waived application fees for all three types of permits.

COVID-Related Activities Ordinance. On November 17, 2020, the Council passed urgency Ordinance No. 20-025, as well as the first reading of regular Ordinance No. 20-026 with the same provisions, temporarily waiving or modifying certain provisions of the Planning Regulations related to other COVID-related activities, which were defined as “uses that have modified their normal operations because of the COVID-19 pandemic, and uses that conduct COVID-19 related activities”. Uses that have modified their normal operations include, but are not limited to, those that, in response to the pandemic, have moved operations outdoors that would normally be conducted indoors. Uses that conduct COVID-19 related activities include, but are not limited to, COVID testing, treatment, and research facilities. The Ordinance waived the 60-day time limit and the application fee for all TUPs for COVID-Related Uses for the duration of the pandemic emergency. On December 1, 2020, the City Council passed the second reading of the regular ordinance, which took effect 30 days later, on December 31, 2020, at which point the urgency ordinance had no further force and effect. The regular ordinance is effective until 180 calendar days after the date of expiration or termination of the City of Emeryville’s declared State of Emergency due to the COVID-19 pandemic, as set forth in Resolution No. 20-23.

COVID Ordinance Expiration Dates. At the time the COVID Outdoor Dining Ordinance was adopted, it was assumed that the pandemic would be over well before August 6, 2021 – its termination date. Since the ordinance has now expired, any outdoor dining facilities operating under its prior provisions are nonconforming. However, in light of the ongoing pandemic, staff has not taken action to require them to be removed. By the time the COVID-Related Activities Ordinance was adopted, it seemed clear that the pandemic may not be over within a year, so staff took the more prudent approach of having it remain effective until 180 days after the end of the City of Emeryville’s declared state of emergency. In retrospect, if staff had been able to foresee how long the pandemic would last, the COVID Outdoor Dining Ordinance would have contained this same termination language. Notwithstanding this fact, Ordinance No. 20-016 does include a provision that it may be extended by the City Council by resolution, but this has not occurred to date. Since Ordinance No. 20-016 has now expired, this provision is no longer in effect, so any extension at this point would need to be by ordinance.

DISCUSSION

Facilities Approved Under COVID Ordinances. Outdoor dining facilities, which include TUPs, Parklets, and Sidewalk Cafes, approved under Ordinance No. 20-016 include:

Number	Name	Address	Approved	Still Operating?
TUP20-001	Public Market Phase I	5959 Shellmound St	06/18/2020	Yes
TUP20-002	Branchline	5850 Hollis St	06/18/2020	No
TUP20-003	Honor Bar Phase I	1411 Powell St	06/24/2020	Yes
TUP20-004	Trader Vic's	9 Anchor Dr	06/30/2020	No
SWCAFE20-001	Doyle Street Cafe Parklet	5515 Doyle St	07/02/2020	Yes
TUP20-005	Denny's	1776 Powell St	07/08/2020	No
TUP20-007	Chevy's	1890 Powell St	07/08/2020	No
TUP20-008	Rudy's Can't Fail Café	4081 Hollis St	07/16/2020	Yes
TUP20-010	Lanesplitter	3645 San Pablo Ave	08/12/2020	No
SWCAFE20-002	Los Moles Sidewalk Café and Parklet	1320 65th St	09/24/2020	Yes*
TUP21-009	Honor Bar Phase II	1411 Powell St	08/05/2021	Yes

*Parklet was never installed. Sidewalk café is still operating intermittently.

The facilities listed above that are TUPs consist of outdoor seating on private property. As noted, about half are still in operation. The only parklet that has been approved and installed under Ordinance No. 20-016 is at the Doyle Street Café, and is still in operation. A second parklet was approved at Los Moles Restaurant at 65th and Hollis Streets, in conjunction with a sidewalk café, but it has not been installed; the sidewalk café was installed and continues to operate intermittently.

Staff is not aware of any issues that have arisen as a result of the approved sidewalk cafes or parklets. Therefore, other than the waiver of the application fee, staff recommends making these changes permanent, which will require an amendment to Article 15 of Chapter 5 of the Planning Regulations, "Sidewalk Cafes" (see Attachment 2).

In addition, staff recommends extending the expiration date of Ordinance No. 20-016 to be 180 calendar days after the date of expiration or termination of the City of Emeryville's declared State of Emergency due to the COVID-19 pandemic, as set forth in Resolution No. 20-23, to be consistent with Ordinance No. 20-026 and other legislation passed in response to the COVID-19 pandemic emergency, and declare that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming. Since the Ordinance has now expired, it is necessary to extend its expiration date by ordinance; staff recommends that this be done as an urgency ordinance, which will take effect immediately upon its passage.

It should also be noted that, unlike planning entitlements such as conditional use permits, which are for the use of private property and which run with the land in perpetuity,

sidewalk café and parklet permits are for the private use of the City's public right of way and, as such, must be renewed every year. For ease of administration, the regulations are written to provide for automatic annual renewal with no fee; however, these permits can not be renewed or revoked by the City if necessary. Thus, while sidewalk cafes and parklets are subject to annual renewal and, hence, never "permanent", they can potentially remain installed indefinitely as long as there are no problems. With respect to parklets, this also requires the City Council to close the parking space or traffic lane where a parklet is installed.

FISCAL IMPACT

This report is for informational purposes; there is no fiscal impact to the City.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has had no communication with the public about this agenda item.

CONCLUSION

Staff recommends that the City Council:

1. Direct staff to prepare an urgency ordinance for future City Council consideration to extend the expiration date of Ordinance No. 20-016 to be 180 calendar days after the date of expiration or termination of the City of Emeryville's declared State of Emergency due to the COVID-19 pandemic, as set forth in Resolution No. 20-23, and declare that any outdoor dining facilities approved under Ordinance No. 20-016 remain valid and conforming.
2. Initiate an amendment to the Planning Regulations provisions for sidewalk cafes and parklets as follows:

Sidewalk Cafes:

- Eliminate the provision requiring that all furnishings be removed at the end of each business day, as long as such furnishings are adequately secured.
- Eliminate the restriction that prohibits bars from having sidewalk cafes, provided that the bar provides full meal service, either from its own kitchen or by contract with another vendor.

Parklets:

- Eliminate the provision requiring the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit for a parklet, unless the parklet involves removal of a parking meter or residential permit parking area space, restricted curb space previously

established by the City Council, or the closure or modification of a travel lane or bike lane.

- Eliminate the provision that a parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use.
- Eliminate the provision that prohibits table service in a parklet.
- Eliminate the restriction on service and consumption of alcoholic beverages in a parklet, provided that all requirements pertaining to the service and consumption of alcoholic beverages in a sidewalk café are complied with.

General:

- Clarify that sidewalk cafes and parklets shall be in compliance with the applicable accessibility provisions of the Americans with Disabilities Act (ADA) and the City of Emeryville Building Code, unless expressly waived or modified.
- Make it explicit that no separate encroachment permit shall be required for a sidewalk café or parklet.

If the Council initiates an amendment to the Planning Regulations as recommended above, it will be brought to the Planning Commission for a public hearing and to make a recommendation to the City Council, following which it will be brought back to the Council for consideration of adoption.

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS

- 1. Ordinance No. 20-016
- 2. Planning Regulations provisions for Sidewalk Cafes and Parklets