



# City of Palo Alto

## City Council Staff Report

(ID # 12302)

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**Report Type: Consent Calendar**

**Meeting Date: 6/7/2021**

**Summary Title: Adopt Legislation Continuing Temporary Regulations for Outdoor Dining, Retail, and Personal Services**

**Title: Adoption of an Ordinance and Resolution Temporarily Continuing: 1) Uses of Public and Private Property for Outdoor Dining, Retail, and Personal Services; and 2) the Pilot Parklet Program Past the end of the Local Emergency**

**From: City Manager**

**Lead Department: Planning and Development Services**

### **Recommendation:**

Staff recommends that Council:

1. Adopt the attached ordinance which will continue the substantive provisions of Ordinance 5500 until December 31, 2021. Ordinance 5500 permits the City to issue encroachment permits for dining, retail, personal service, and indoor recreation in outdoor areas. These include closed public streets, sidewalks, public parking lots, and on-street parking spaces when used as parklets<sup>1</sup>. It also allows the use of private parking lots for similar uses in lieu of normal parking requirements. This ordinance will allow these programs to continue past the end of the local emergency when Ordinance 5500 will sunset.
2. Approve the attached resolution which will continue the Pilot Parklet Program as first approved in Resolution 9909. This resolution will allow the pilot to continue to the existing sunset date of December 31, 2021 even if emergency measures related to COVID-19 are reduced or rescinded.

### **Background and Discussion:**

On June 23, 2020, the City Council adopted [Ordinance 5500](#), which temporarily permitted businesses, such as restaurants, retail, and personal services, to operate outdoors on both

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<sup>1</sup> Parklets in Palo Alto permitted temporarily during the emergency have included both at-grade and platform style parklets where the platform extends and is affixed to the existing public sidewalk.

public and private property in lieu of normal zoning and parking requirements. (See [staff report](#) and [minutes](#)). A summary of Ordinance 5500's provisions follows:

- **Use of City Rights-of-Way:** Permits the City to issue encroachment permits for use of temporarily closed streets, sidewalks, city-owned parking lots, and for use of on-street parking spaces as at-grade or platform style parklets for dining, retail, personal services, and recreation uses. (This ordinance does not authorize the temporary closure of City streets; it merely allows the use of the streets *if they are closed*).
- **Use of Private Property:** Permits the Director of Planning to approve use of private surface parking lots and other privately owned outdoor areas not normally permitted for dining, retail, personal services, and recreation uses.
- **Permits Alcohol Service:** Establishments that are allowed to serve alcohol under a conditional use permit or as a legal nonconforming use may serve alcohol outdoors if approved by the state Department of Alcoholic Beverage Control, notwithstanding any other City zoning code or CUP restriction.
- **Waiver of Reviews and Fees:** Waives architectural review and permit/review fees otherwise required for the activities above.

Ordinance 5500 was adopted as an emergency ordinance based, in part, on the presence of restrictions prohibiting many indoor business operations. Ordinance 5500 is set to expire at the same time the City's local emergency is declared over. As the state moves toward lessening restrictions for all types of businesses, including restaurants, retail, and personal services, the emergency basis that underpins Ordinance 5500 will undoubtedly fade.

The attached ordinance re-adopts the substantive provisions of Ordinance 5500 as a regular ordinance. This will allow the various outdoor uses to continue, even if and when the local emergency is declared over and/or if the state reduces or ends its restrictions on indoor activities. Adoption of the attached ordinance is also necessary to ensure the pilot parklet program can continue should COVID-related restrictions subside or be rescinded completely. The attached ordinance will sunset on December 31, 2021, in line with the Council's direction to extend the pilot parklet program to that date.

Council should note that the prior ordinance allowed consumption of alcoholic beverages in Lytton Plaza and Heritage Park. Staff do not recommend continuing this allowance and the proposed ordinance does not include this policy. Initially, this was included to account for patrons purchasing to-go food—including to-go alcoholic beverages—and allowing patrons to enjoy their meal in an area nearby to the restaurant. With the state and county re-opening, including the opening of bars and restaurants, this is no longer needed.

Council should note that as a regular ordinance, this ordinance requires two readings for adoption and will be effective on the 31<sup>st</sup> day after adoption. Should Council approve the

ordinance on first reading on June 7, the second reading is tentatively scheduled for June 21, and the ordinance would be effective July 22.

As a companion to Ordinance 5500, the Council also approved [Resolution 9909](#) at the same June 23, 2020 meeting, which approved operational details and regulations to the pilot parklet program and separately gave the City Manager authority to close certain streets. The resolution attached continues the pilot parklet program provisions of Resolution 9909 to the existing sunset date of December 31, 2021, but without relying on any emergency powers or authority. This will permit the pilot parklet program to continue should the county and state COVID-19 restrictions continue to be reduced or if they are rescinded completely.

#### Updates on Street Closures in University Avenue and California Avenue Areas

While this ordinance and resolution allow the extension of these programs, the City is currently making plans to end some programs. At the time of this report's publication, staff are conducting outreach regarding the following proposal:

- Recommend University Avenue and Ramona Street reopen on Tuesday, July 6, 2021
- Recommend California Avenue reopen on Tuesday September 7, 2021. Note that the September date allows for businesses on California Avenue to pursue parklets under the temporary program and a smoother transition from a full street closure model to a parklet only model for operations. It also allows staff to plan for potential adjustments to the Farmer's Market footprint.

The actions above will be proposed in response to potential end to of the state of emergency and testimony from local retailers and property owners. This testimony included comparisons from several retailers with stores in different Bay Area communities, as well as some restaurants, that demonstrated sales at other areas have rebounded while sales in Palo Alto locations have not. For example, b8ta noted that customer traffic is down 92% in Palo Alto from a comparable month pre-Covid, while the rest of its retail stores are recovering 5-10% on a relative basis per week. Traffic is down 92% in Palo Alto from a comparable month pre-Covid. The rest of its stores are recovering 5-10% on a relative basis per week. Palo Alto has shown a declining recovery month over month.

Likewise, the City has heard from restauranters that would like the closures to remain. They site patrons not being comfortable with dining indoors. Additionally, they have indicated limited in door space and patronage indoors will lead to layoffs of staff.

The City Council has approved funding to develop streetscape designs for longer term closure of University and California Avenues that would enable regular (e.g. weekend) closure and opening of these streets to accommodate both vehicular access and pedestrian environment goals. The development of such designs will require extensive participation by community stakeholders, environmental review, and ultimately implementation funding from businesses

within each district. This process will necessarily extend beyond the current emergency period.

The above plans will be further discussed by the City Council on June 22, 2021 and, while related, are not the subject of this report or proposed actions. Neither the proposed ordinance nor proposed resolution depend on street closures; however, they are necessary should the City proceed with opening closed streets and wish to continue to authorize parklets and other encroachments.

### **Policy Implications:**

At this time, uncertainty regarding the state's response to the pandemic remains. While generally the state—and the Bay Area in particular—have indicators trending in the right directions, it is unknown what restrictions will remain. It is also unknown how long vaccinations provide protections, if booster shots will be needed, how the continued circulation of the virus may further COVID-19 spread, and if or how the winter months may affect spread of the virus.

By continuing these programs, the City can continue some flexibility for activities to occur outdoors. These outdoor activities may be safer, may feel safer for some patrons, and may provide a desirable amenity that draws more residents and visitors to Palo Alto. The extension will continue to limit some parking spaces where private parking lots are used all or in part for outdoor dining and retail. This could impact off-street parking availability. Additionally, the extension of the parklet pilot program will continue to occupy on-street parking spaces; dedicating these spaces to use by private businesses in lieu of use by private cars.

Lastly, waiving fees for these encroachment permits may benefit businesses, but will limit the City's collection of fees. These fees are a revenue source that helps ensure those utilizing city services pay the cost of those services. At this time, staff recommend and the proposed ordinance continues the fee waivers for these encroachment permits.

Many businesses that desire to use outdoor space have already filed for and been issued an encroachment permit. Businesses in the closed portion of Cal Ave, however, have not had the opportunity to build parklets, and therefore fee waivers may be a reasonable consideration. In addition, many businesses remain strained financially, so welcome the relief as they undertake outdoor seat. Given, however, the City's constrained budget, recovering fees for staff work is important to sustaining the City organization. Still, the City may wish to continue providing this relief for businesses considering the ongoing economic recession facing businesses large and small.

Regarding the temporary parklet pilot program, City staff do propose administrative changes to the program that will aim to limit conflicts as a result of the program. First, new parklets must adhere to the City's design guidelines. The City will not tolerate construction of any parklet that

is unpermitted, for which plans have not been reviewed and approved, and which have not been duly inspected as required. Second, a parklet can only extend in front of a neighboring store front if that store owner and/or manager agrees. This should reduce conflict between neighbors. These changes will be reflected in the administrative guidelines approved by the Director of the Public Works Department.

**Resource Impact:**

Planning Code Enforcement Officer, Building Inspection staff, and Public Works staff will have additional workload related to this program. In addition, the encroachment permit fee waivers mean the City will not recover the costs for reviewing and issuing permits.

**Stakeholder Engagement:**

The City Manager’s Office has continued to lead bi-weekly meetings with local businesses. More recently, and in light of diminished attendance due to the improving business climate, the meetings have become monthly. During these meetings, businesses and property owners have expressed broad support for parklets, outdoor dining, and parking lot use for outdoor business activities. Generally, though not in all cases, these activities do not pose challenges to neighboring businesses and can allow multiple types of businesses to conduct their needed activities.

**Environmental Review:**

This ordinance and resolution are categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

**Attachments:**

**Attachment A - Interim Ordinance Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities on Public and Private Property Past the End of the Local Emergency (PDF)**

**Attachment B - Resolution of the Council of the City of Palo Alto Continuing the Pilot Parklet Demonstration Program Past the End of the Local Emergency (PDF)**

Ordinance No. \_\_\_\_\_

Interim Ordinance of the Council of the City of Palo Alto Temporarily Continuing the Expansion of Outdoor Dining, Retail and Other Activities on Public and Private Property and Relaxing Regulations Regarding Onsite Parking, On-Sale of Alcohol, Design/Architectural Review, Permit Fees, and Alcohol Consumption in Public Places, All to Facilitate Such Outdoor Use

The Council of the City of Palo Alto ORDAINS as follows:

**SECTION 1.** Findings and Declarations. The City Council finds and declares as follows:

A. On June 23, 2020, the City Council adopted Ordinance 5500, an emergency ordinance, in response to COVID-19 and its effects on local businesses. At that time and since then, county and state regulations related to COVID-19 have limited or curtailed many indoor activities, including dining, bars, retail, performances, and other recreational uses.

B. Ordinance 5500 will sunset at the same time the City’s declaration of local emergency due to COVID-19 is rescinded. (See section 14 of Ordinance 5500).

C. The State of California has indicated that its COVID-19 related regulations for most businesses may end in June 2021 with the end of the state’s “Blueprint for a Safer Economy,” also known as the four-tiered system of regulations for businesses based on several COVID-19 public health metrics. In recent months, the County of Santa Clara has progressed from the highest level of restrictions, the purple tier, to the lowest yellow tier within the state’s Blueprint for a Safer Economy.

D. Through this Ordinance, the City Council desires to temporarily continue the provisions of Ordinance 5500 even if state, county, and/or City regulations related to COVID-19 become less restrictive or are rescinded completely.

**SECTION 2.** City Manager Authorization

The City Manager or his or her designee(s) may promulgate guidelines and implementing regulations for the uses and programs described in this Ordinance as long as such regulations do not conflict with this Ordinance.

**SECTION 3.** Fee Waivers for Encroachment Permits and Parking Space Closures

A. The permit fees set forth in the Municipal Fee Schedule are temporarily waived for applications for encroachment permits under Palo Alto Municipal Code Section 12.12.010 and Section 12.12.020, as modified by this Ordinance, to place structures and equipment

in the public right-of-way (including closed streets and sidewalks) for purposes of outdoor dining and outdoor retail sales and display of wares.

- B. The parking space closure fee in the Municipal Fee Schedule collected by the Department of Planning and Development Services is temporarily waived for the use of a parking space(s) on-street or in a parking lot for purposes of outdoor dining and outdoor retail sales and display of wares as authorized through an encroachment permit, license, or agreement with the City.

#### **SECTION 4. Modified Review Process for Commercial Sidewalk Encroachment Permits**

Notwithstanding contrary provisions of PAMC Section 12.12.020, permits may be granted for commercial sidewalk encroachments for outdoor retail sales and display areas and outdoor eating areas. Permits for these purposes shall not be required to undergo and complete design review by the Planning Department described in subsection (d) of Section 12.12.020. Except as expressly modified herein, the provisions of Section 12.12.020 shall apply to commercial sidewalk encroachments.

#### **SECTION 5. Eating and Drinking Establishments**

Eating establishments, and drinking establishments may temporarily relocate some or all of their existing indoor seating capacity to outdoor seating capacity, as follows:

- A. Location. Outdoor eating areas may be placed in one or more of the following areas:
  1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;
  2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;
  3. In on-street parking spaces approved for use as temporary parklets, in accordance with the Pilot Parklet Demonstration Project as first approved by Council Resolution No. 9909 and continued by subsequent resolutions;
  4. Surface parking lots that currently provide required onsite parking for the eating/drinking establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;
  5. Other outdoor areas on the eating/drinking establishment site not originally permitted for outdoor seating in the establishment's approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the

Director of Planning, or his or her designee, in accordance with subsections C and D of this Section, below; and

6. In other areas that the Council identifies by resolution or ordinance.

B. Use of Private Parking Lots – Temporary Reduction of Parking Requirements.

1. Notwithstanding the parking requirements applicable to eating/drinking establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for eating/drinking establishments, an eating/drinking establishment may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment's parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor eating, subject to review and approval of the Planning Director or his or her designee.
2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with an eating/drinking establishment tenant(s) may place outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.

C. Application. An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of an eating/drinking establishment's permitted indoor restaurant seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.

D. Seating Layout Review. A Seating Layout Review is required to relocate some or all of an eating/drinking establishment's permitted indoor seating to outdoor seating in privately-owned areas on the eating/drinking establishment site not originally permitted for outdoor eating. The Seating Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed outdoor seating layout based on the following criteria:

1. Seating layout does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where



outdoor seating is to be placed in parking lots or on-street parking spaces.

2. Seating layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.
  3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer's label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.
  4. Any heaters must comply with fire codes.
  5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.
  6. Other requirements established in the standards and guidelines issued by the Director of Planning.
- E. Fee. No fee will be charged for submittal and review of the Application and for conducting a Seating Layout Review.
- F. Occupancy. Total seating occupancy (including all indoor and outdoor seating) shall not exceed the overall occupancy for which the restaurant is permitted.
- G. Alcohol Service. Establishments that are allowed by the City to serve alcohol for onsite consumption by issuance of a conditional use permit ("CUP") as required by PAMC Section 18.42.090 or as a legal nonconforming use, and that both have an on-sale license from the Department of Alcoholic Beverage Control ("ABC") and are duly authorized by ABC to serve alcohol in outdoor areas, shall be allowed to serve alcohol for onsite consumption in such outdoor areas, notwithstanding any prohibition on outdoor alcohol service or consumption in the PAMC or planning entitlement issued under Title 18 (Zoning) of the PAMC. During the effective period of this Ordinance, establishments that meet the preceding requirements may expand their footprint to outdoor areas without an amendment of the CUP, notwithstanding PAMC Section 18.42.090(c). Outdoor alcohol service shall be in full compliance with ABC regulations, as amended.
- H. No Architectural Review. Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor eating areas or signage related to such areas during the effective period of this Ordinance.

## **SECTION 6. Retail Establishments**

Retail establishments may temporarily relocate some or all of their existing customer-accessible square footage to outdoor spaces as follows:

- A. Location. Outdoor retail sales and display areas and outdoor eating areas may be placed in one or more of the following areas:
1. Public streets temporarily closed by the City of Palo Alto, through issuance of an encroachment permit under PAMC Section 12.12.010;
  2. Sidewalks through issuance of an encroachment permit under PAMC Section 12.12.020, as modified by Section 4 of this Ordinance;
  3. Surface parking lots that currently provide required onsite parking for the retail establishment, through issuance of an approval by the Director of Planning, or his or her designee, as described in subsections C and D of this Section, below;
  4. Other outdoor areas on the retail establishment site not originally permitted for retail sales and display or dining in the retail establishment's approved site plan or planning entitlement (such as landscaped areas), through issuance of an approval by the Director of Planning or his or her designee in accordance with subsections C and D of this Section, below; and
  5. In other areas that the Council identifies by resolution or ordinance.
- B. Use of Private Parking Lots – Temporary Reduction of Parking Requirements.
1. Notwithstanding the parking requirements applicable to retail establishments in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for retail establishments, a retail establishment may conduct outdoor retail sales and display and may place outdoor eating areas in its parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles. If the establishment's parking lot has ten or fewer parking spaces, up to 100 percent of the parking lot may be used for outdoor dining/retail, subject to review and approval of the Planning Director or his or her designee.
  2. Notwithstanding the parking requirements applicable to shopping centers and their tenant businesses in Title 18 (Zoning) of the PAMC or in individual planning entitlements or approvals for shopping centers or their tenant businesses, a shopping center with a retail establishment tenant(s) may place outdoor retail sales and display areas and outdoor eating areas for such tenant business(es) in the shopping center parking lot, so long as at least half of the parking spaces on the subject site remain available for use by vehicles.

- C. Application. An application in a form approved by the Director of Planning shall be submitted to the Planning and Development Services Department to relocate some or all of a retail establishment's customer-accessible square footage to outdoor retail sales and display in privately-owned areas on the retail establishment site not originally permitted for outdoor retail sales and display. The Director of Planning is authorized to establish submittal requirements and procedures. Temporary Use Permits (TUP) under PAMC Section 18.42.050 may be utilized for this purpose. A TUP issued for this purpose may be valid for a specified period longer than 45 days, notwithstanding subsection (d) of Section 18.42.050. The Planning Director may extend a TUP issued prior to the effective date of this Ordinance to be valid beyond 45 days.
- D. Merchandise or Seating Layout Review. A Layout Review is required to relocate some or all of an retail establishment's permitted indoor customer-accessible square footage to privately-owned areas on the retail establishment site not originally permitted for retail. The Layout Review shall be conducted by a transportation planner, planner, and/or fire inspector who will review and either approve or require modifications to the proposed retail layout based on the following criteria:
1. The placement of the merchandise, displays, or other items does not create a safety risk and adequate pedestrian and vehicular separation is maintained, including with movable barriers as appropriate where outdoor seating is to be placed in parking lots or on-street parking spaces.
  2. The layout accommodates appropriate vehicle and pedestrian circulation and maintains adequate paths of travel and complies with accessibility requirements of the Americans with Disabilities Act.
  3. Any tents must comply with fire codes and Palo Alto Fire Department issued standards for tents, and safety standards set forth by the National Fire Protection Association for fire-resistant tents and must include an affixed manufacturer's label stating the tent meets NFPA requirements. A State Fire Marshal seal on the tent or a certificate is needed to prove treatment.
  4. Any heaters must comply with fire codes.
  5. An adequate and visible barrier is placed that clearly separates the retail area from the parking area and provides sufficient protection for patrons. Adequacy shall be defined in standards and guidelines issued by the Director of Planning.
  6. Other requirements established in the standards and guidelines issued by the Director of Planning.

- E. Fee. No fee will be charged for submittal and review of the Application and for conducting a Layout Review.
- F. No Architectural Review. Notwithstanding PAMC Sections 18.77.077 and 18.76.020, architectural review shall not be required for proposed outdoor retail areas or signage related to such areas during the effective period of this Ordinance.

**SECTION 7. Compliance with Other Regulations, Orders and Approvals**

The uses of public and private property allowed in this Ordinance shall be conducted in compliance with any applicable state or county mandate (including executive orders and health orders), this Ordinance, Resolution No. 9909 and its successors, and all other local and state regulations, orders, and approvals, as applicable (collectively, “Applicable Law”). Any approval, allowance or permit to conduct such temporary outdoor use(s) shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety or welfare.

**SECTION 8. No Vested Rights**

The outdoor uses of public and private property allowed in this Ordinance are temporary and shall be terminated upon the earlier of the date stated in the applicable permit/approval or the expiration of this interim Ordinance, unless earlier revoked by the City Manager or other authorized official (or their designee) or terminated by action of the City Council. The City may discontinue one or more, or all, of the allowed outdoor uses at any time if the City Manager or designee determines that the public health, safety or welfare warrant such action. Nothing in this Ordinance shall establish a vested right.

**SECTION 9. Suspension of Prohibition on Alcohol Consumption in Lytton Plaza and Cogswell Plaza**

Notwithstanding PAMC Sections 22.04.330 and 22.04.331, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in the parking lots adjacent to Lytton Plaza and Cogswell Plaza.

**SECTION 10. Use of City Parking Lots for Reopening Activities**

- A. The City Manager, or his or her designee (“City Manager”), is authorized to permit outdoor dining, retail and other activities necessary to facilitate the reopening of businesses, in public parking lots owned by the City, subject to the City Manager’s adoption of rules, regulations, guidelines, and standards for such use (“Regulations”), and publication of such Regulations on the City’s website. Use of parking lots, or portions thereof, by a business shall require a license or other agreement, including an agreement to indemnify and hold harmless the City, and provision of insurance.

- B. The City Manager is authorized to waive any fee in the Municipal Fee Schedule associated with the temporary use of parking areas for the purposes identified in Section A above.
- C. Notwithstanding PAMC Section 9.04.020, the City Manager is authorized to suspend the prohibition on consumption of alcoholic beverages in any City owned parking lot.

**SECTION 11. Personal Services, Indoor Recreation and Other Uses**

The authorized outdoor uses of public and private spaces authorized in this Ordinance may be applied to personal services, indoor recreation and other uses. Prior to authorizing these additional activities to occur, the City Manager, or his or her designee (“City Manager”), shall adopt rules, regulations, guidelines, and standards for these uses, and publish them on the City’s website.

**SECTION 12. Severability**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 13. Environmental Review**

The Council finds that the Ordinance is categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

**SECTION 14. Effective Date**

This Ordinance shall be effective 31 days after adoption and shall remain in effect until December 31, 2021 unless otherwise modified, repealed or extended by the City Council.

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**SECTION 15. Uncodified**

This Ordinance shall not be codified.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Planning & Development  
Services

\*NOT YET APPROVED\*

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Continuing the Pilot  
Parklet Demonstration Program as First Authorized by Resolution 9909

RECITALS

A. In June, 2020, the City Council adopted Resolution 9909 in response to COVID-19 and its effects on local businesses. Resolution 9909 created a Pilot Parklet Demonstration Program and also permitted the City Manager to temporarily close certain streets. At that time and since then, county and state regulations related to COVID-19 have limited or curtailed many indoor activities, including dining, bars, retail, and other recreational uses.

B. Resolution 9909 has been extended several times by the Council as the COVID-19 pandemic has continued to necessitate various state and county restrictions on many City businesses. See Resolutions 9911, 9933, and 9954 (“successors” or “successor resolutions”). These resolutions were premised on the presence of the COVID-19 pandemic and the associated state and county restrictions on indoor business activities, including dining, retail, and personal services, among others.

C. The State of California has indicated that its COVID-19 related regulations for most businesses may end in June 2021 with the end of the state’s “Blueprint for a Safer Economy,” also known as the four-tiered system of regulations for businesses and activities based on several COVID-19 public health metrics.

D. The Council desires to temporarily continue the Pilot Parklet Demonstration Program, even if state and county regulations related to COVID-19 become less restrictive or are rescinded completely.

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF PALO ALTO RESOLVES AS  
FOLLOWS:

SECTION 1. Findings and Declarations. The Council hereby adopts the above Recitals as findings of the Council.

SECTION 2. Pilot Parklet Program and Design Requirements. The City Council hereby approves the temporary use of on-street parking spaces in Palo Alto for parklets under the Pilot Parklet Demonstration Program as first described Resolution 9909 and continued by its successor resolutions.

A. The Director of Public Works/City Engineer, or his or her designee (the “Director”), is delegated the authority to exercise their discretion to

approve specific parklet locations, plans, designs, materials, and standards, and amendments thereto, consistent with the Parklet Standards and Requirements. The plans and designs shall be signed by the Director. Any existing parklet locations, plans, designs, materials, standards, and amendments to the Parklet Standards and Requirements approved by the Director under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless otherwise amended, rescinded, or modified in any other way.

- B. The Director is authorized to issue implementing guidelines and regulations for the Pilot Parklet Demonstration Program, and to approve amendments to the Parklet Standards and Requirements as the Director in his or her discretion deems necessary and proper. Any existing guidelines, regulations, or amendments issued by the Director under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless otherwise amended, rescinded, or modified in any other way.
  
- C. The Director may approve a parklet application through issuance of an Encroachment Permit, subject to the general regulations in Palo Alto Municipal Code Section 12.12.010 and the following criteria and procedures:
  - 1. Use. Parklets shall be restricted to outdoor eating areas of eating establishments.
  
  - 2. Application and Review. A complete application for a parklet encroachment permit shall be reviewed by City staff for a determination as to whether such application complies with the Parklet Standards and Requirements. The application shall include all information necessary for a determination on the application including, but not limited to a certificate of insurance and a hold harmless and indemnity agreement in favor of the City shall be submitted in accordance with the provisions of Palo Alto Municipal Code Section 12.08.120. The Director shall grant or deny the application.
  
  - 3. Conditions. Conditions of approval may be imposed on parklet encroachment permits to maintain the public health, safety and welfare.
  
  - 4. Revocation. The Director may revoke a parklet encroachment permit if he or she determines that the conditions of the permit, the provisions of this Resolution, or any applicable regulation, ordinance, or provision



of the Municipal Code are being violated, or if the municipal use of the area is required for reasons of public health, safety, welfare or convenience. The permittee shall be notified of an intent to revoke the permit and shall be entitled to a hearing before the Director whose decision shall be final.

5. Existing Permits. Any parklet encroachment permit issued under the authority of Resolution 9909 and/or its successors shall remain valid under the authority of this Resolution unless such a permit is otherwise amended, revoked, or modified in any other way.

SECTION 3. Rules and Regulations. In addition to the authority given to the Director of Public Works and his or her designee in Section 2 of this Resolution, the City Manager is authorized to enact any rule or regulation or implementing guidelines to effectuate and implement this Resolution.

SECTION 4. Compliance with Other Regulations, Orders and Approvals. The uses of public and private property allowed in this Resolution shall be conducted in compliance with any applicable state or county mandate (including executive orders and health orders), and all other local, county, and state regulations, orders, and approvals, as applicable (collectively, "Applicable Law"). Any approval, allowance or permit to conduct such temporary outdoor use(s) shall be subject to revocation by the issuing City official if the use is conducted in violation of Applicable Law, or poses a threat to public health, safety or welfare.

SECTION 5. No Vested Rights. The uses allowed in this Resolution are temporary and shall be terminated upon the earlier of the date stated in the applicable permit/approval or the expiration of this Resolution, unless earlier revoked by the City Manager or other authorized official (or their designee) or terminated by action of the City Council. The City may discontinue one or more, or all, of the allowed uses at any time if the City Manager or designee determines that the public health, safety or welfare warrant such action. Nothing in this Resolution shall establish a vested right.

SECTION 6. The Council finds that this Resolution is categorically exempt from CEQA under CEQA Guidelines Sections 15301 (existing facilities) and 15304(e) (minor temporary use of land having negligible or no permanent effects on the environment).

SECTION 7. This Resolution supersedes Section 4 of Resolution 9909, as extended by Resolutions 9911, 9933, and 9954.

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\*NOT YET APPROVED\*

SECTION 8. This Resolution shall become effective immediately upon approval and shall remain in effect until December 31, 2021 unless otherwise modified, repealed or extended by the City Council.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Director of Planning and  
Development Services