

AN ORDINANCE
of the City Council of the City of Berkley, Michigan, to amend Section 106-310.A of Article VIII, Parklets, of Chapter 106, Streets, Sidewalks and Other Public Places, of the Berkley City Code to allow parklets to occupy spaces in front of adjacent businesses when they cannot be located in front of the primary business.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: New Article VIII, Parklets, is added to Chapter 106 of the Berkley Code of Ordinances, as follows:

ARTICLE VIII. PARKLETS

Sec. 106-305. – Intent.

The intent of this Article is to provide a greater variety of outdoor service options to Berkley food service establishments, encourage the conversion of underutilized on-street parking spaces, and facilitate the activation of the pedestrian spaces along City corridors.

Sec. 106-306. – Definitions.

Parklet: An outdoor service area converted from a public on-street parking space or equivalent size thereof that is adjacent to a food service establishment and used for the purpose of hosting food service patrons as an extension of the adjacent food service establishment’s regular food service. A parklet may or may not utilize part of an adjacent sidewalk in addition to on-street areas.

Adjoining business: The food service establishment that hosts and sits adjacent to the proposed parklet.

Furnishings: All furniture, lighting, landscape material, fixtures, tables, chairs, trash receptacles, benches, sun shading, and other materials placed within the parklet.

Sec. 106-307. – Permit required.

- A. An adjoining business must obtain an annual permit from the City’s Community Development Department in order to construct and use a parklet. The permit must be prominently displayed at the adjoining business. The construction and use of a parklet must meet the standards of this article.
- B. The adjoining business is responsible for parklet permitting, construction, operations, and maintenance.
- C. The parklet permit applicant must apply for and obtain any necessary encroachment permits, licenses, authorizations, or other approvals, pay such fees, and deposit such security as is required by applicable law or ordinance.

Sec. 106-308. – Application.

An adjoining business that desires to develop a parklet must complete and submit a written application to the Community Development Department, on a form to be developed by the Community Development Department, for the construction and use of the parklet. The applicant must fully and truthfully state and provide all information, including proof of insurance, requested by the Community Development Department and pay the application/permit fee established by resolution of the City Council. A parklet permit or permit renewal application must include the following:

- A. Applicant’s name, address, email address, and telephone number.
- B. Existing zoning and current land use of the property under consideration and zoning and current land use of all immediately adjacent properties.
- C. A sketch plan (top-view drawing of the parklet), drawn to a reasonable scale, containing the following information:
 - 1. Distance to the nearest residential zoning district or single-family residence, as measured from the edge of the proposed parklet to the nearest residential zoning district or single-family residence lot line.
 - 2. General location and dimensions of all existing sidewalks, streets, and parking spaces.
 - 3. Location of the proposed parklet, including width, length, frontage, distance to nearest intersection or crosswalk, distance to nearest auto or bicycle lane, and distance to any adjacent parking space(s).
 - 4. The frontage details of the adjoining business, including the location of the primary entrance and any existing street furnishings and lighting.
 - 5. The location of the proposed access ramps, platforms, and enclosures.
 - 6. Details of any hardware such as fasteners to be used in the construction of ramps and platforms.
 - 7. The location of all furnishings.
 - 8. The location of outdoor lighting fixtures, if proposed, as well as the location of wiring and a description of how the wiring will be secured to prevent tripping or electrical hazards.
 - 9. Location of on-site driveways and adjacent alleys.
- D. Photographs, drawings, or manufacturer’s brochures fully describing the appearance of all proposed tables, chairs, umbrellas, awnings, canopies, lighting, or other furnishings/fixtures related to the parklet, including but not limited to portable heaters, and other fixtures used during colder weather.

- E. A signed Hold Harmless Agreement on a form provided by the City.
- F. A Certificate of Liability Insurance, in an amount acceptable to the City, and naming the City as an additional insured party.
- G. For a parklet in which alcohol will be served, a liquor liability policy or certificate of insurance naming the City as an additional insured.
- H. If outdoor lighting is proposed, the Community Development Department may require a photometric plan.
- I. If temporary shelters are proposed, a separate sketch plan must be submitted with the following:
 - 1. The location and dimensions of all temporary shelters within the permitted parklet.
 - 2. A dimensioned seating layout.
 - 3. The materials of which the shelters are fabricated.
 - 4. The type, size, and location of portable heating elements, fuel tanks, and decorative lighting.
 - 5. The type and location of lighting to be used.
 - 6. The power source for portable heating elements and lighting, with a description of how the wiring will be secured to prevent tripping or electrical hazards.

Sec. 106-309. – Fees.

An application for a permit under this article must be accompanied by a fee in the amount established by resolution of the City Council. Proration of fees is not permitted. Fees are non-refundable after a permit has been issued by the City.

Sec. 106-310. – Requirements.

Any adjoining business constructing or using a parklet must comply with the following requirements:

- A. Location
 - 1. A parklet must not occupy or interfere with any fire lane, operational driveway, or bus zone.
 - 2. A parklet must be at least twenty (20) feet away from a crosswalk or intersection.
 - 3. A parklet, including all furnishings and enclosures, must leave a minimum five (5) foot wide pedestrian walkway.

4. A parklet may be located only on streets with speed limits of not more than 30 miles per hour.
5. If located on streets with speed limits at or below 25 miles per hour, a minimum two (2) foot setback from adjacent vehicle or bicycle lanes is required.
6. If located on streets with speed limits between 26- 30 mph, a minimum three (3) foot setback from adjacent vehicle or bicycle lanes is required.
7. A parklet must be located at least fifty (50) feet from a residential zoning district or single-family residential use, as measured from the edge of the parklet to the nearest residential property line.
8. An adjoining business may construct only one (1) parklet.
9. An adjoining business may not use more than two (2) on-street parking spaces or the equivalent length thereof for a parklet.
10. No more than five (5) parking spaces per city block may be converted into a parklet.
11. A parklet may be constructed only on streets where a minimum twenty (20) foot width for two-way traffic is maintained.
12. A parklet must be located at least four (4) feet from any adjacent parking space.
13. If the parklet is located adjacent to a parking space, a wheel stop must be installed by the adjoining business.
14. Parklets that protrude into the sidewalk must maintain a minimum five (5) feet pedestrian clearance.
15. If an adjoining business cannot locate its parklet in front of its business due to any of the location restrictions indicated in Section 106-310(A), then an adjoining business may locate its parklet in a parking space in front of a business directly adjacent to the adjoining business, with written permission from that business/property owner. Such permission would need to be provided with the initial application and with each renewal.

B. Design

1. A parklet, including furnishings and enclosures, must not block the view of vehicle, bicycle, or pedestrian traffic, or block the view of traffic control devices such as traffic signs, traffic signals, and other traffic warning devices.
2. A parklet, including furnishings and enclosures, must not obstruct motorists' visibility of traffic signals from two hundred (200) feet away.

C. Enclosure

1. A parklet must include an enclosure that separates the parklet from vehicular traffic and any adjacent on-street parking spaces. The parklet location requirements in this article also apply to parklet enclosures.
2. Enclosures must have a minimum height of thirty-six (36) inches and a maximum height of forty-two (42) inches.

D. Operation

1. A parklet may not be located or used within the public right-of-way between November 1 and March 31.
2. Temporary shelters, such as canopies or bubble tents, may be used. Temporary shelters must comply with all requirements in this article.

E. Ramps and Platforms

1. Ramps must be provided for parklets to provide barrier free access from curbed sidewalks.
2. Ramps or platforms must be designed and constructed to maintain unobstructed drainage flow along the gutter.
3. Ramps or platforms must not be bolted into the road or penetrate the surface of the road or parking space that the parklet occupies. Any ramps or platforms may be bolted into the existing curb. All curbs must be restored to the satisfaction of the City of Berkeley Department of Public Works.
4. Connections between platforms, ramps, sidewalks, or parking spaces used for the parklet or to obtain access to the parklet must be flush and must not leave a horizontal gap greater than one-half (1/2) inch, or a vertical separation greater than one-quarter (1/4) inch. If a vertical separation is to exceed one-quarter (1/4) inch, 1:4 bevels are required.
5. For parklets proposed on parking spaces with grades that exceed five percent (5%), level platforms must be provided.

F. Furnishings

1. Any parklet furnishings are the responsibility of and must be maintained and operated by the adjoining business.
2. Parklet furnishings must be anchored or of sufficient weight so that at no time are the parklet furnishings at risk of becoming windblown or an obstruction or danger to public safety.
3. Furniture, including benches, planters, chairs, and tables, must not exceed four (4) feet in height.

4. Hanging or overhead furnishings, including umbrellas, must have a clearance of at least seven (7) feet and cannot exceed ten (10) feet from the ground.
 5. Any umbrellas must be closed or removed at the end of operations each day.
 6. Parklet furnishings must be maintained in a state of good repair. Any parklet furnishings having broken, peeling, or rusting features or showing other signs of disrepair must be promptly removed or replaced.
 7. Any sun-shading materials must be constructed of fire-retardant materials.
 8. Decorative lighting may be used only during the hours of the parklet's operation. Decorative lighting must not create glare that adversely affects public safety or adjacent properties and must be secured in a manner to prevent electrical hazards or trip hazards to parklet patrons or sidewalk pedestrians.
- G. After the removal of the parklet, the applicant must restore the streets and rights-of-way to the same condition they were in before the parklet was developed.
- H. All aspects of parklet construction and operation must comply with the Michigan Barrier Free Code.

Sec. 106-311. – Other permits.

A permit obtained under this article does not relieve any person of the responsibility for obtaining any other permit, or authorization required by any other ordinance, statute, or administrative rule.

Sec. 106-312. – Revocation.

The Community Development Department may revoke the parklet permit of any adjoining business that violates or ceases to meet any requirement of this article or violates any other federal, state, or local regulation, makes a false statement on their application, or conducts activity in a manner that is detrimental to the public health, safety, and welfare.

Immediately upon such revocation, the Community Development Department shall provide written notice to the permit holder by certified mail to their place of business or residence as indicated on the application. Immediately upon such revocation, the permit shall become null and void.

Sec. 106-313. – Alcohol served.

Any applicant holding a valid liquor license from the State of Michigan for their adjoining business is required to include a copy of their liquor license with the parklet application. The provisions of the liquor license and compliance with State standards for serving alcohol will apply to the parklet operations.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance will remain in full force and effect.

SECTION 3: Penalty

All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefore shall be punishable by a civil fine of not more than \$500, and/or such other sanctions and remedies as prescribed in Article IX of Chapter 82 of the Code of Ordinances.

SECTION 4: Effective Date

This Ordinance will become effective 30 days following the date of adoption.

SECTION 5: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on April 15, 2024.
Adopted on the Second Reading at the Regular City Council Meeting on May 6, 2024.

Bridget Dean, Mayor

Attest:

Victoria E. Mitchell, City Clerk