

ORDINANCE NO. 2021-122

AN ORDINANCE AMENDING THE ZONING CODE OF THE BENTONVILLE MUNICIPAL CODE TO ALLOW PUBLIC AND RESERVED PARKLETS AND ADOPTING AN APPLICATION FEE AND ENCROACHMENT AGREEMENT FEE.

WHEREAS, City Council adopted Ordinance No. 0-2020-130 on July 14, 2020 in support of local businesses during the COVID-19 pandemic allowing placement of tables, chairs and other items on city of Bentonville public on-street parking spaces adjacent to downtown business establishments temporarily through January 1, 2021; and,

WHEREAS, City Council adopted Ordinance No. 2020-196 on October 13, 2020 amending the expiration of Ordinance No. 0-2020-130 from January 1, 2021 to April 30, 2021; and,

WHEREAS, City Council adopted Ordinance No. 2021-84 on March 30, 2021 amending the expiration of Ordinance No. 0-2020-130 from April 30, 2021 to August 30, 2021; and,

WHEREAS, City Council wishes to continue the long-term support of downtown business establishments consistent with the Bentonville Community Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS:

Section 1. That within this ordinance, except section headings, all underlined text shall be added and strikethrough text shall be deleted.

Section 2. That Zoning Code *Sec. 201.02 Definitions of Terms and Uses* shall be and is hereby amended by adding the following definitions:

Parklet, public: A public automobile parking space that has been converted into an outdoor public space, either by an adjacent establishment or by the city, that is available free of charge to everyone 24 hours a day. This definition shall not include "sidewalk café" which is separately defined.

Parklet, reserved: A public automobile parking space that has been converted into an outdoor dining space reserved exclusively by a food and/or drink establishment adjacent to the parking space. This definition shall not include "sidewalk café" which is separately defined.

Encroachment Agreement: An agreement with the city allowing an establishment to encroach into the public right-of-way with structures or other items.

Encroachment Premises: The area of public right-of-way identified in an encroachment agreement.

Section 3. That Zoning Code *Sec 401.04 Table of Uses for Zoning District* shall be and is hereby amended by adding a “parklet” use under the retail section and allowing the “parklet” use by right in DC, DE and DN4.

Section 4. That Zoning Code *Sec. 601 Use Regulations* shall be and is hereby amended with *Attachment A: Parklet Standards*, an electronic copy and paper copy of which is on file with the City Clerk, and is hereby adopted by reference as though it were copied herein fully.

Section 5. The City Council is adopting a one-time fee to apply for a parklet in the amount of \$125.

Section 6. That the City Council is hereby adopting an annual encroachment fee for conversion of a public parking space to a reserved parklet in the amount of \$1,000 per space per year. There shall be no fee for a public parklet.

Section 7. That this Ordinance shall be in full force and effect 30 days from the date of its passage and approval.

PASSED and APPROVED this 8 day of JUNE, 2021.

Approved:

Stephanie Orman
Mayor Stephanie Orman

ATTEST:

Kirby Romines
Kirby Romines, City Clerk



Attachment A
Parklet Standards

Underlined text shall be added and strikethrough text shall be deleted.

Article 601 Use Regulations

Sec. 601.32 Parklet

- (a) **Applicability.** Public and reserved parklets are allowed in certain zoning districts by right, as identified in the Table of Uses in Article 401 of the Zoning Code, and require establishments to enter into an Encroachment Agreement with the city and shall comply with the regulations of this section.
- (b) **Eligibility.** To be eligible to enter into an encroachment agreement to use a public parking space for a public or reserved parklet, the establishment must meet all of the following criteria:
- (1) The establishment is located in the Downtown Study Area as shown on the city’s GIS map.
 - (2) The establishment is located in a zoning district where parklets are allowed by right.
 - (3) The establishment is adjacent to a public street with public on-street parking;
- (c) **Submittal Requirements.**
- (1) Application. Establishments that meet the eligibility requirements may submit an application for an Encroachment Agreement to the planning department in accordance with current planning department policies and procedures. The application shall indicate if the establishment is using their designated *encroached premises* for a public or reserved parklet.
 - (2) Letter of Support. Applicants must submit letters of support, in a format provided by the city, from adjacent property owners indicating that the use of the encroached premises will not negatively impact use of their property.
 - (3) Design. The application shall include a site plan showing the location and design of the parklet and shall identify the location of all public utilities including associated rights-of-way/easements.
- (d) **Encroachment Agreement.** The Encroachment Agreement shall include the following:
- (1) *Encroached premises.* The Encroachment Agreement shall designate parking spaces adjacent to the establishment, hereinafter referred to as the “*encroached premises*,” with a map outlining the designated parking spaces for the placement of tables, chairs and other items. The establishment agrees to use only the designed encroached

premises and maintain a minimum of 5' of clear passageway for pedestrians between the building and the parklet.

- (2) Utility access. The establishment shall agree that the parklet will not inhibit access to, maintenance or operation of any public utility. If the parklet is located over a utility main or any appurtenances, the establishment shall remove the parklet to accommodate any work on utilities.
- (3) Signage. The establishment shall agree that the parklet will not be used for advertising for the establishment. Signage shall not be attached to, on or located in the parklet.
- (4) Indemnification. Establishment shall agree to include a release and indemnification provision releasing and indemnifying the City of Bentonville from personal injury and property damage liability resulting from the use of the *encroached premises*;
- (5) Condition of encroached premises. Establishment shall agree to inspect and report to the Street Department in a timely manner any defects in the *encroached premises*. The establishment owner shall be responsible for the cleanliness, maintenance, and upkeep of their *encroached premises*.
- (6) Insurance. Establishment shall agree that, at its sole expense, shall maintain comprehensive general liability insurance, protecting against all claims for personal injury, death or property damage occurring upon, in or about the *encroached premises* resulting from the use or occupancy thereof, with a minimum of \$1,000,000 (one million dollars) in coverage and limits acceptable to the city for the entire term of the Encroachment Agreement insurance rated and any extension thereof. The city must be named in this policy as an additional insured entity. Further, if the establishment serves alcohol, then the establishment must have liquor liability insurance with a minimum of \$1,000,000 (one million dollars). The city must also be named in this policy as an additional insured entity. The establishment shall include copies of all policies of insurance with evidence of the payment of the premiums thereon with his, her or its application. The establishment shall deliver to the city at least ten (10) days prior to the expiration of such policy, evidence that it has been renewed. All policies of insurance carried hereunder shall provide that they cannot be canceled without giving at least ten days prior written notice to the city and shall be written by insurance companies licensed by the State of Arkansas and reasonably satisfactory to the city. Any insurance carried by an establishment on his, her or its own property or for his, her or its own benefit in connection with this section shall contain a clause waiving any claim by the insurance company for subrogation against the city.
- (7) Smoking. The establishment shall agree to designate that the *encroached premises* will be non-smoking, due to the premises being an extension of the establishment.

- (8) Alcohol. The establishment shall agree that alcoholic beverages may only be served or consumed in the *encroached premises* if the establishment is in compliance with their ABC liquor state and local licenses as approved by the state Department of Alcoholic Beverage Control or otherwise allowed by law.
 - (9) Hours of Operation. The establishment shall agree to operate the *encroached premises* during the establishment's hours of operation 7:00 a.m. ~~and all operations in the *encroached premises* must cease and be vacated by the close of operation hours~~ or up to 1:00 a.m., whichever ~~occurs first~~ is earlier. Outside of the establishment's hours of operation, the parklet shall be available for public use.
 - (10) Agreement terms. ~~The Encroachment Agreement agreement shall expire one (1) year from the date of fully executed agreement. Applicants may request to renew annually and pay the annual encroachment fee.~~
 - (11) Conditions of parklet. ~~The establishment shall agree to maintain all elements of the parklet in good condition. Elements experiencing routine wear and tear shall be repaired or placed.~~
 - (12) Inspections. ~~The establishment shall agree to periodic inspections by city staff for compliance with all regulations.~~
 - (13) Minimum Design Standards. ~~The establishment shall agree to comply with the minimum design standards set forth in Subsection (e) Minimum design standards below.~~
 - (14) Building and Fire Codes. ~~The establishment shall agree to comply with all Building and Fire Safety Codes.~~
- (e) **Minimum Design Standards.** Establishment shall agree that the *encroached premises*, at the sole expense of the establishment, must be effectively blocked off and visibly marked in order to ensure safety of patrons from vehicles in the area. If table, chairs or other seating is being provided, the *encroached premises* shall meet the following minimum requirements. Additional elements may be allowed in the *encroached premises* if the design meets the guidelines of parklet design as established by National Association of City Transportation Officials (NACTO).
- (1) **Size**
 - a. **Length.** The maximum length of a parklet is limited to the length of the responsible establishment's frontage. If an establishment wishes to exceed this requirement, they must include a letter of support from adjacent establishment owners. This letter of support must expressly grant permission to occupy the parking spaces in front of their establishment.

- b. *Width.* The maximum width of a parklet is the area between the curb and travel lane of the parking space it replaces.

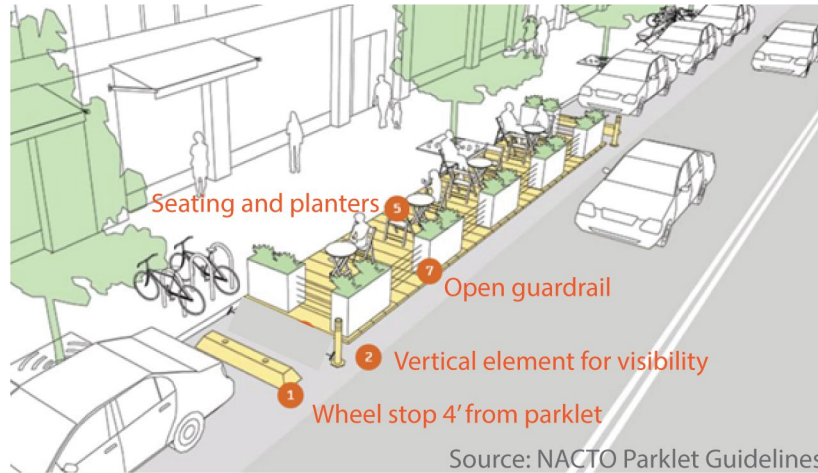
(2) **Location**

- a. *Separation from travel lane.* A parklet may not intrude into travel lanes. Parklet elements should provide a minimum 1-foot buffer between the travel lane and the parklet.
- b. *Separation from intersections.* To allow for clear visibility at intersections, a parklet may not be located within 20-feet of an intersection, measured from the right-of-way of the intersection to the edge of the parklet.
- c. *Separation from adjacent parking stalls.* Parklets must be buffered a minimum of 4-feet on each end from adjacent parking stalls. Wheel stops are required to clearly delineate the buffer zone.
- d. *Separation from street infrastructure.* Parklets shall not block critical curbside or street infrastructure. These include, but are not limited to: fire apparatus, utility meters or manholes, and handicap-accessible parking spaces.
- e. *Sight visibility.* Parklets may not interfere with the sightlines of traffic nor pedestrians. Parklets shall conform to AASHTO's sight visibility requirements.

(3) **Design Requirements.**

- a. *Temporary design.* Parklets should be temporary in nature. The parklet must be designed to be removable and should be constructed with a wood frame, steel frame, or pedestal support systems, or other method as approved by the Planning Director. ~~are encouraged.~~
- b. *Parklet delineation.* To clearly delineate between the parklet and the travel way, a parklet must have a continuous barrier along the travel lane. The barrier may be composed of railings, barricades, planters, and/or a seat wall. The barrier may be a maximum of 42 inches in height. Parklets should incorporate seating and plantings in their design.
- c. *Materials.* Materials shall be high quality, weather-resistant materials that fit within the context of downtown. The surface of the parklet should be slip and weather resistant to ensure safety and accessibility.
- d. *ADA Compliance.* Parklets must meet the requirements of the Americans with Disabilities Act. The seating area must accommodate a 60-inch turning circle for a wheelchair and the entrance to the parklet must be a minimum of 60-inches in width. The parklet must be designed to be flush with the adjacent curb. A steel transition plate should be used to ensure a flush transition.

- e. *Open Air.* Parklets may not be enclosed by walls or permanent structures. Parklets must be open to the air, except that an awning, canopy, or umbrella, may be placed or constructed over the parklet. In order to provide sufficient pedestrian clearance, awnings, canopies and umbrellas shall have 7 feet of free and clear space from the road surface to the lower edge of the umbrella, awning or canopy.
- f. *Drainage.* The design of the parklet should not inhibit the adequate drainage of stormwater.



- (f) *Revocation.* An Encroachment Agreement may be revoked by the city upon a finding by the Planning Director that the establishment has violated any terms of the agreement; or that the encroachment causes a health/safety risk; or that a city ordinance or state or federal law has been violated; or the establishment or an employee of the establishment has been convicted of serving alcohol to a minor; the parklet is not being adequately maintained or or that the city has initiated an infrastructure improvement project in the area of the encroached premises. The establishment may appeal this revocation to the City Council within 14 days of the notice of revocation.