

ORDINANCE NO. 05-25 N.S.

**AN INTERIM URGENCY ORDINANCE OF THE CITY OF RICHMOND,
CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTION 65858 ESTABLISHING A 45-DAY TEMPORARY MORATORIUM ON THE
ESTABLISHMENT, EXPANSION OR TERM EXTENSIONS OF PARKLETS WITHIN
CITY LIMITS DURING THE PENDENCY OF THE CITY'S REVIEW AND ADOPTION
OF PERMANENT ZONING REGULATIONS FOR SUCH USES**

WHEREAS, the City of Richmond ("City") has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the City pursuant to its Charter and California Constitution Article XI, section 7; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the City by regulating the establishment and expansion of Parklets (as defined in this Urgency Ordinance below) within City limits; and

WHEREAS, the City is responsible for adopting and implementing land use regulations within its boundaries; and

WHEREAS, Richmond Municipal Code ("RMC") section 14.46.090 regulates Parklet approvals and installations by requiring a Parklet permit from the City's Transportation Services Department, an encroachment permit from the City Engineer or designee, as well as the receipt of a final inspection and installation approval from the City's Engineering department; and

WHEREAS, the City has no other development standards or regulations applicable to the installation or use of Parklets; and

WHEREAS, the City's permissive policy towards Parklets could result in a proliferation or oversaturation of said uses within the City; and

WHEREAS, the proliferation of Parklets throughout the City without due consideration presents an immediate threat to public health, safety, or welfare because Parklets allow encroachments into public right-of-way, including roadways, which may undermine traffic safety, create nuisances, increase the risk of fires and parklet user safety, decrease parking in already congested commercial areas thereby creating increased vehicular traffic, reduce driver visibility thereby compromising driver and pedestrian safety, violate provisions of the American with Disabilities Act, compromise nearby crosswalks, complicate intersections, and in some instances may violate other state laws; and

WHEREAS, Parklet structures encroaching on roadways and on-street parking provides little economic benefit to the City or City residents; and

WHEREAS, absent clear regulation, the proliferation of Parklets within the City poses a threat to the public peace, health, and safety, and, unless the City takes action to regulate the impacts described above are likely to occur; and

WHEREAS, the City desires to further regulate Parklets to ensure that public roadways and public property remain free of public nuisances, safe and accessible for all users, and clear of conditions that pose threats to public health, safety, and welfare, to ensure that future development is undertaken in a manner consistent with the City's General Plan, and to ensure that any Parklet developments or installations comply with State and City regulations that inure to the public's health, safety, and welfare; and

WHEREAS, there is currently a pending application for a Parklet permit to establish a new Parklet before a non-urgency ordinance would become effective; and

WHEREAS, Government Code Sections 36934, 36937 and 65858 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety and to prohibit a use that is in conflict with a contemplated general plan, specific

plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, City staff require time to study and develop appropriate regulations for the installation of Parklets consistent with State and federal law; and

WHEREAS, pursuant to the above-described express statutory authority and its police power, the City Council desires, on an urgency basis, to temporarily prohibit (1) the establishment of new Parklets, the expansion of existing Parklets, or extending the term of existing Parklets, as well as (2) the acceptance of Parklet permit applications for new or expanded Parklets, or for the extension of the term for existing Parklets, and (3) the processing of Parklet permit applications for new or expanded Parklet permits, or for the extension of the term of existing Parklet permit applications for Parklets within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS

The City Council finds and determines the recitals above are true and correct, and are hereby incorporated by reference. Additionally, based on the foregoing, both verbal and written testimony at the public hearing, including the staff report, exhibits, and any materials provided by members of the public, the City Council finds as follows:

A. This Urgency Ordinance is being adopted in order to allow the City time to thoroughly study and develop the City's laws, rules, procedures and fees related to the operation, expansion and establishment of Parklets within the City, to enable the City to adequately and appropriately preserve the health, safety and welfare of the community in the City of Richmond.

B. For the purposes of this Urgency Ordinance, the term "Parklet" shall encompass all removeable platforms made available to the public for recreational use that occupy a portion of a parking lane that is closed to motor vehicle parking.

C. The City finds that in the absence of a regulatory framework to govern Parklets, the adverse impacts frequently associated with Parklets likely will occur, resulting in unregulated and significant negative impacts upon the public health, safety, and welfare of the community.

D. The City finds that the adverse impacts from Parklets include the following:

(1) The proliferation of Parklets throughout the City without due consideration presents an immediate threat to public health, safety, or welfare because Parklets encroachment into the public right-of-way including roadways, which may undermine traffic safety, create nuisances, decrease parking in already congested commercial areas thereby creating increased vehicular traffic; and

(2) The use of Parklets tends to reduce driver visibility, compromise nearby crosswalks, and complicate intersections further impacting driver, pedestrian and Parklet user safety; and

(3) Parklets may violate provisions of the American with Disabilities Act as well as State law.

(4) Parklets may pose a fire safety risk due to possible use of heaters or other outdoor cooking or food smoking activities.

(5) Parklets may post a public safety risk due to the consumption of alcohol near outdoor walkways adjacent to public streets and vehicular traffic.

E. The City needs time to draft a proposed text amendment to the Zoning Code to preserve the health, safety and welfare of the community in the City of Richmond with respect to the installation or expansion of Parklets to control for the risks stated above, as well as the possible creation of other nuisances.

SECTION 2. AUTHORITY AND EFFECT

The State Planning and Zoning Law (Cal. Gov't Code Sections 65000, *et seq.*) broadly empowers the City to plan for and regulate the use of land in order to provide for orderly development, the public health safety and welfare, and a balancing of property rights and the desires of the community and how its citizens envision their city.

SECTION 3. MORATORIUM

A. During the Effective Period of this Urgency Ordinance as specified below, no permit application shall be issued, accepted, or processed to establish a new Parklet, expand an existing Parklets, or extend the term of an existing Parklet within the City. The foregoing shall explicitly prohibit the issuance of any zoning, land use, discretionary permit, building permit, environmental approval, business license or any other entitlement involving Parklets, during the Effective Period.

B. Notwithstanding the foregoing, the fact that a business within the City of Richmond currently operates an existing Parklet shall not constitute an obstacle to obtaining their annual City of Richmond business license. Additionally, permits may be issued for minor construction, rehabilitation and landscaping or other purposes not involving the expansion of the building area of an existing Parklet. Any Parklet currently under construction with a valid building permit on the effective date of this Urgency Ordinance shall be exempt from this Urgency Ordinance.

SECTION 4. STUDY AND DEVELOPMENT

During the period of this Urgency Ordinance, the City shall study and develop as necessary City laws, rules, procedures and fees related to Parklets, to enable the City to adequately and appropriately preserve the health, safety and welfare of the community in the City of Richmond. Pursuant to Government Code Section 65858 the Director of Public Works will issue a report for the legislative body on what has been accomplished during the renewal of the moratorium before it is extended.

SECTION 5. URGENCY MEASURE

It is hereby declared that this Urgency Ordinance is necessary as an urgency measure for the preservation of the public health, safety and welfare. The City Council finds that current zoning regulations and land use plans do not adequately regulate the establishment and operation of Parklets and therefore do not adequately protect the peace, health, safety and general welfare of the residents of the City or in communities around the City. The City Council finds the urgency measure is necessary in order to ensure adequate regulation of installation and operation of Parklets. The facts constituting the urgency are:

A. The City of Richmond does not currently have clear standards in the Richmond Municipal Code related specifically to the details of establishing or expanding Parklets within the City, beyond requiring them to apply for Parklet permits and encroachment permits.

B. The negative impacts frequently associated with Parklets will likely increase as they continue to proliferate throughout the City, resulting in unregulated and potentially significant negative impact upon public health, safety, and welfare of the community.

C. To permit the additional Parklets within the City without being subject to specific regulations that are consistent with the General Plan, and that take into account the impacts that such installations have, constitutes a threat to the public's health, safety, and welfare. Parklets create a threat to public health, safety, or welfare because Parklets encroachment into the public right-of-way including roadways, which may undermine traffic safety, create nuisances, decrease parking in already congested commercial areas thereby creating increased vehicular traffic.

D. New or expanded Parklets in the City with minimal regulations are likely to be sought within the City, which will further exacerbate the impacts of such installations.

E. Absent the adoption of this Urgency Ordinance, the expansion or installation of Parklets would likely result in the negative and harmful secondary effects, as identified above, including, but not limited to, threats to public health, safety, or welfare due to the encroachment

into the public right-of-way including roadways, which may undermine traffic safety, create nuisances, decrease parking in already congested commercial areas thereby creating increased vehicular traffic, as well as reduce driver visibility, compromise nearby crosswalks, complicate intersections further impacting driver, pedestrian and Parklet user safety, violate State and federal law, and create fire safety issues.

F. As a result of the negative and harmful secondary effects associated with improperly regulated or unregulated Parklets, the current and immediate threats to the public health, safety and welfare, it is necessary to adopt a temporary, forty-five (45) day moratorium on the establishment of new Parklets and the expansion of existing Parklets.

G. A moratorium is immediately required to preserve the public health, safety and welfare and should be adopted immediately as an urgency ordinance, to make certain that the establishment, expansion or extensions of Parklets is prohibited for the period of this Urgency Ordinance. Imposition of a moratorium will allow the City sufficient time to conclude the preparation of a comprehensive ordinance for the regulation of such activities.

SECTION 6. SEVERABILITY

The City Council hereby declares, if any provision, section, subsection, paragraph, sentence, phrase or word of this Urgency Ordinance is rendered or declared invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, then the City Council would have independently adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases or words of this Urgency Ordinance and as such they shall remain in full force and effect.

SECTION 7. CEQA COMPLIANCE

Pursuant to Section 15001 of the California Environmental Quality Act ("CEQA") Guidelines, this Interim Urgency Ordinance is exempt from CEQA based on the following: (i) This Urgency Ordinance is not a project within the meaning of CEQA Section 15378 because it has no potential for resulting in physical change to the environment, either directly or indirectly and (ii) this Urgency Ordinance is also exempt pursuant to CEQA Section 15061(b)(3) since the proposed ordinance involves an Interim Urgency Ordinance establishing a 45-day temporary moratorium on the expansion or installment of Parklets and does not have the potential to significantly impact the environment.

SECTION 8. EFFECTIVENESS OF ORDINANCE.

This Urgency Ordinance shall take effect immediately upon its adoption by a 4/5 vote, pursuant to the authority conferred upon the City Council by Government Code Sections 36934, 36937, and 65858. This Urgency Ordinance shall be effective during the Effective Period which shall be from its adoption and shall be of no further force and effect forty-five (45) days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858(b).

SECTION 9. PUBLICATION

The City Clerk shall certify as to the passage and adoption of this Interim Urgency Ordinance and shall cause the same to be published in a manner prescribed by law.

I hereby certify that the foregoing Urgency Ordinance of the City Council of the City of Richmond was duly passed and adopted at a regular meeting thereof held January 28, 2025, by the following vote:

AYES: Councilmembers Bana, Brown, Jimenez, Robinson, Wilson,
Vice Mayor Zepeda, and Mayor Martinez.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

EDUARDO MARTINEZ
Mayor

Approved as to form:

DAVE ALESHIRE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Urgency Ordinance No. 05-25 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on January 28, 2025.


Pamela Christian
Pamela Christian, Clerk of the City of Richmond