



Hold a public hearing and consider text amendments to Chapters 74, Article 6 (Sidewalk Cafes, Parklets, and Similar Special Uses of Public Rights-of-Way) of the San Marcos Code of Ordinances, that, among other things, would provide a definition and criteria for sidewalk seating areas, and remove the 2020 Temporary Parklets Program



# Adding Sidewalk Seating Area

*Sidewalk cafe* means an outdoor dining area that ~~is~~:

- (1) Is Associated with a restaurant with kitchen facilities for the preparation of the food to be sold, the primary business of which is the on-premises sale of prepared food;
- (2) Is located on a sidewalk abutting and within the span of the facade of the restaurant;
- (3) Is Open to the air; ~~and~~
- (4) Contains removable or fixed tables, chairs, planters or other appurtenances; and
- (5) Is provided for the sole use of patrons of the associated restaurant.

*Sidewalk seating area* means an outdoor area consisting of tables and / or chairs that:

- (1) Is associated with any business including a restaurant with kitchen facilities;
- (2) Is located on a sidewalk abutting and within the span of the facade of the business;
- (3) Open to the air;
- (4) Contains removable tables, chairs, planters or other appurtenances; and
- (5) May be used by, but is not provided for the sole use of patrons of the associated business.



# Authorizing Administrative Approval

## Sec. 74.200. Authorized special use licenses.

- (a) The city manager or the city manager's designee may grant a special use license for use of public right-of-way in accordance with the requirements of this article for the following uses:
  - (1) Neighborhood gateway features and landscaping;
  - (2) Parklets under section 74.204(b);
  - (3) Sidewalk cafes;
  - (4) Supportive or decorative columns, arches or other structural or decorative features; or
  - (5) Overhead, surface or subsurface encroachments, other than signs, not specified herein.
- (b) The city council may grant a special use license for a parklet under section 74.204(a).
- (c) The city manager or the city manager's designee may grant a certificate for use of public right-of-way in accordance with the requirements of the article for Sidewalk Seating Areas.



# Establishing Criteria

(b) General requirements for all certificate holders. Any business seeking a certificate for a sidewalk seating area must comply with the following:

- (1) Maintain a minimum width of unobstructed paved areas on a sidewalk of six feet;
- (2) Have a sidewalk layout which clearly shows the location of all proposed tables, chairs, planters or other private appurtenances, and all existing signage, planters, or other public appurtenances approved by the city and available in the business for public inspection;
- (3) No barrier device, screen, or fence shall be installed to serve a sidewalk seating area
- (4) The business shall have posted hours of operation near the main entrance;
- (5) All approved appurtenances are permitted to be placed in the public right of way no earlier than one hour prior to the posted opening time of the business and shall be removed no later than one hour following the posted closing time of the business; and
- (6) Insurance shall not be required; however, the business owner must indemnify, defend, hold harmless and release the city, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with the use of public right-of-way.
- (7) The certificate of use shall be posted in the same area and manner as the certificate of occupancy.



# Providing Terms for Expiration

## (c) Expiration, enforcement, and termination of certificates.

(1) Certificates for the use of public right of way shall be issued to the associated business owner and shall only expire when a business receives a new owner or is closed for a period of more than six months.

(2) If a certificate holder is found in violation of any requirements of this ordinance the city may issue a notice of the violation and offer an opportunity to cure the violation within ten days after receipt of the notice. If the violation is not cured, the city may revoke the certificate by providing notice of revocation in writing.; or

(3) The City may terminate the approved certificate without recourse when necessary to implement a capital improvements or utility project, to address threats to public health or safety, or to mitigate adverse impacts to adjacent property owners and businesses caused by the improvement or use for which the license is granted; and



# Removing Temporary Language

## ~~Sec. 74.208. Provisions for parklets subject to review after one year.~~

~~In the month of August, 2016, the city council shall review and consider the provisions of this ordinance that allow for and relate to parklets to determine their effectiveness and impact on the community, and whether to continue, amend or repeal such provisions. The city council may also review this ordinance at any other time it deems appropriate. During this review period, no more than five licenses for parklets may be approved.~~

~~{ Ord. No. 2015-30, § 1, 9-1-15 }~~

~~*ADDENDUM TEMPORARY PARKLETS PROGRAM 2020*~~



# Recommendation

- Staff recommends approval of the amendments as proposed.