

ORDINANCE NO. 2020-

AN ORDINANCE OF THE CITY COUNCIL OF THE OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 74 OF THE SAN MARCOS CITY CODE BY ADDING AN ADDENDUM TO ARTICLE 6 THAT ESTABLISHES PROCEDURES AND CRITERIA FOR THE GRANTING OF TEMPORARY, REVOCABLE, LICENSES FOR PARKLETS AS A MEANS TO REACTIVATE DOWNTOWN FOLLOWING THE COVID-19 STAY AT HOME ORDERS OF 2020; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 74, Streets and Sidewalks, of the San Marcos City Code is hereby amended by adding an addendum to Article 6 to read as follows:

TEMPORARY PARKLETS PROGRAM 2020

Definitions.

In this article:

Parklet, Temporary means a small area of land within a public right-of-way temporarily dedicated for use by the public for commercial or non-commercial activities and purposes, together with improvements, such as lighting, signage, paving, benches, sculpture, landscaping, barricades and fencing, in furtherance of such purposes.

Public right of way means a strip of land over which the city has authority used or intended to be used, wholly or in part by the city, as a public street or sidewalk, or for utility purposes.

Sidewalk means that portion of a public right-of-way, not including the street, that is paved for pedestrian traffic.

Street means that portion of a public right of way that provides primary vehicular access to adjacent land, whether designated as a street, highway, thoroughfare, parkway, throughway, avenue, lane, boulevard, road, place, drive or other similar designation, including areas designated for on-street parking.

Temporary Parklet Manual means a manual approved by the city manager or the city manager's designee that establishes technical standards or specifications

for authorized improvements and uses under this article that may be supplemented by other technical standards approved by the city manager or the city manager's designee.

Authorized Temporary Parklet Licenses.

- (a) The city manager or the city manager's designee may grant a temporary parklet special use license for a Temporary Parklet.
- (b) All other improvements in or uses of a public right-of-way not specified in this article addendum may only be approved as specifically provided by other ordinances or by the city council, subject to applicable laws.
- (c) A special use temporary parklet license granted under this article is a revocable grant of a privilege and is not a property right, nor conveyance of an interest in real property.

Requirements for Temporary Parklet licenses.

(a) *Uses and improvements not allowed.* No temporary parklet license may be granted under this article for:

- (1) any building or structure requiring a building permit, other than a neighborhood gateway feature, supportive or decorative column, arch or other structural or decorative feature of a building;
- (2) any improvement, facility or use, the installation or allowance of which would:
 - a. result in a violation of the Americans with Disabilities Act or any other applicable local, state or federal health or safety law or regulation;
 - b. unduly interfere with the free passage of vehicles on the street or of pedestrians on the sidewalk;
 - c. create a traffic hazard; unduly interfere with the safe and efficient operation of a utility facility;
 - d. create undue adverse impacts on adjacent property owners and businesses; or
 - e. block the sight visibility triangle at an intersection; or.
 - f. require the relocation of any utility or utility facility.

(b) *General requirements for all temporary parklet licenses.* A license applicable to permitted uses and improvements allowed under this article, shall include, as applicable:

- (1) all requirements set forth in the Temporary Parklet Manual or other applicable technical standards and specifications with which the Licensee must comply;
- (2) terms and restrictions necessary to protect public use of the public right-of-way or the facilities and access needs of a public or private utility provider;
- (3) specifications for required clearances between the improvements and utility facilities, whether above ground, underground or overhead, as prescribed by applicable building and health and safety codes, franchise agreements or state or federal laws;
- (4) a requirement that the licensee pay the cost to relocate a utility facility or improvement in a public right-of-way in connection with the installation of the improvements, if consent is granted for such relocation;
- (5) authorization for the city or a utility provider to remove, without liability, all or part of the improvements if necessary to obtain access to an affected utility facility;
- (6) provisions approved by the city attorney that require the licensee to 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 licensee's use of public right-of-way;
- (7) a provision specifying that the term or expiration date of the license shall not exceed August 14, 2020.
- (8) a provision for termination of the license for violation of its terms, subject to notice of the violation and an opportunity to cure the violation within 5 calendar days after receipt of the notice, except that violation of the expiration date shall be addressed immediately.;
- (9) a provision for termination of the license by the city without recourse before the end of the license term 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

- (10) a provision providing for the prompt removal of all improvements or cessation of uses upon termination of the license at the Licensee's expense, including the right of the city to remove improvements upon failure of the Licensee to do so and to recover the city's cost for such removal.

Requirements for Temporary Parklets.

- (a) *Approval of Temporary Parklets by city manager.* The city manager or the city manager's designee shall designate may approve applications for a temporary parklet that meets the established criteria.
- (b) *Approval of parklets by city council.* An application for approval of a parklet which does not meet the established criteria in a parking area of a street shall be considered by the city council after a public hearing on the application. Following the conclusion of the public hearing, the city council may approve a license agreement that identifies the parklet area and any applicable restrictions, or deny the application.

Smoking and alcohol restrictions applicable to Temporary Parklets.

(a) Temporary Parklets approved under this article shall be subject to the same restrictions and prohibitions against smoking as are applicable to parks pursuant to Chapter 34, Article 5 of the San Marcos City Code, together with applicable enforcement remedies and penalties thereunder.

(b) It is unlawful for any person to publicly consume or display alcoholic beverages within a parklet. No person shall be issued a citation or arrested for an offense under this subsection unless the person has first been issued a verbal warning and given an opportunity to comply with this section.

(c) In addition to any other remedies and penalties that may be pursued for a violation of this section, the city manager or the city manager's designee may revoke a license issued under this article to a licensee that commits a violation under this section.

Insurance

- (a) *Insurance for Temporary Parklets*

(1) No special use license shall be granted for a temporary parklet or sidewalk café unless the licensee files with the city manager or city manager's designee a certificate of liability insurance or other proof of insurance in a form acceptable to the city's risk manager confirming that the applicant has procured the insurance required by this section. If the policy is not kept in full force and effect throughout the term of the license, the special use license shall automatically become void and the improvements must be removed at that time.

(2) The insurance policy shall be issued by an insurance company authorized to do business in the state. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the city, its officers, agents or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The minimum amounts of insurance coverage may be increased by the city when it is in the best interest of the public. The policy of insurance shall name both the licensee and the city as insured parties to the full amount of the policy limits.

Application.

(a) An application for a temporary parklet license under this article must be filed with the department designated by the city manager on a form approved by the city manager or the city manager's designee.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect after its passage, approval and adoption on second reading and will remain in effect until August 15, 2020 except that any enforcement related to this ordinance will continue until resolved.

PASSED AND APPROVED on first reading on DATE.

PASSED, APPROVED AND ADOPTED on second reading on DATE.

Jane Hughson

Mayor

Attest:

Approved:

Tammy Cook
Interim City Clerk

Michael J. Cosentino
City Attorney