CONSENT CALENDAR
May 15, 2018

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jordan Klein, Manager of Office of Economic Development

Subject: Establishment of the Parklet Ordinance; Adding Berkeley Municipal Code Section 14.48.300

RECOMMENDATION
1. Adopt first reading of an Ordinance adding BMC 14.48.300 Parklets Ordinance, to allow the City of Berkeley Engineering Division of the Public Works Department to process minor encroachment permits for the installation of parklets in the public right of way; and

FISCAL IMPACTS OF RECOMMENDATION
The revenue from the encroachment permit fees offsets the costs associated with administration of the program. The installation of parklets (conversion of on-street parking spaces into public spaces and amenities) may result in a slight reduction in parking revenues over time. Staff estimates that during the parklet pilot program, that impact has been minimal, and going forward, losses would be equivalent to three tenths of one percent (0.3%) of on-street parking revenues, or approximately $30,000 per year.

CURRENT SITUATION AND ITS EFFECTS
A parklet pilot program, established in 2013, allows businesses and community organizations in commercial districts to construct and ‘host’ a mini park or “parklet” in the public-right-of-way. A parklet dedicates space in the public right-of-way for public uses such as seating, landscaping, or bicycle racks. Parklets functionally widen the sidewalk and provide a place to sit, watch, and enjoy the street. Since adoption of the pilot program in 2013, five parklets have been installed in the City, the first in August 2014 and the most recent in December 2017. There is continued interest in parklets in the City of Berkeley; a sixth parklet is currently under construction, and several more are in the conceptual stage.

The pilot program has been successful: parklet projects serve as public amenities that improve the pedestrian environment, animate key streetscapes, and provide high
quality, unique public spaces for the community to enjoy. Staff recommends that City Council now formalize the program by adopting an addition to the City’s municipal code governing the location and installation of parklets in Berkeley.

Based on the experience of the pilot program, two changes to the parklet program are recommended as it is made permanent:

- The performance bond requirement has been modified to be included as needed rather than a standard condition. Correspondingly, the provisions of the maintenance agreement have been strengthened to cover the cost and effort of parklet removal. The performance bond requirement has stymied a number of potential parklet applications. Other municipalities (e.g., San Francisco) do not require a performance bond as a standard condition of approval and instead reserve the option to request a performance bond if necessary. The City of Berkeley will take a similar approach; under the formal program the City Manager or his/her designee may require a performance bond on a case by case basis.

- The pilot program previously limited parklets to commercial (C) districts; staff is now recommending that the program be expanded to MU-LI Mixed Use Light Industrial, MM Mixed-Manufacturing and MUR Mixed Use-Residential. Based on the experience of the pilot program, parklets are most successful when hosted by a business or non-profit that has the ability to deliver and maintain a high quality public amenity for a mixed use district. This change is initiated by potential parklet hosts requesting expansion of the program to their areas.

**BACKGROUND**

The world’s first formal public parklets were initially conceived and installed in San Francisco in 2010. Since then, parklets have been introduced in cities across the United States and internationally.¹

On July 2, 2013 the Berkeley City Council adopted the “Parklets Pilot Program” acting upon a recommendation of the Transportation Commission to establish a pilot program allowing up to ten parklets in City of Berkeley commercial districts subject to the procedures and conditions outlined in the accompanying staff report and guidelines (Attachment 3). A parklet, per this program, was defined as “the temporary use of space in the dedicated public right-of-way (parking spaces, unused bus stops, and other types of vehicular and non-vehicular zones) for public uses such as seating or bicycle racks.” Subsequently, staff in the Public Works Engineering and Transportation divisions engaged with parklet applicants to craft and refine parklet designs, and provide support throughout the permitting and installation process. This experience has informed the development of a framework for a permanent parklet program, including enabling legislation, applicability, and procedures for the construction of future parklets.

¹ The San Francisco Planning Department’s *Parklet Manual*, published by in 2013, provides a comprehensive overview of the goals, policies, procedures and guidelines for creating an urban parklet in San Francisco and also informed City of Berkeley staff. See [http://pavementtoparks.org/parklets/#parklet-manual](http://pavementtoparks.org/parklets/#parklet-manual)
Staff is now recommending Council adopt an Ordinance to formally establish the program by creating BMC section 14.48.300 Parklets. The Ordinance establishes the applicability, exceptions, and general requirements for the ongoing parklet program including the production of appropriate signage, adequate insurance, and context sensitive design. Staff is also recommending Council adopt the accompanying Resolution, which rescinds the pilot program’s requirements for program compliance as these refined requirements are reflected in the ordinance 14.48.300 Parklets. The Ordinance also modifies BMC section 16.18.010 to include parklets in the definition of a minor encroachment.

Parklets serve as mini public parks or plazas, providing aesthetic enhancements to the overall streetscape. In place of car parking (or other public right-of-way space), a platform is built to extend the grade of the sidewalk into the street. Once the platform is installed, benches, tables, chairs, landscaping, and bike parking can all be placed on top in order to create a Parklet. Parklets must remain publicly accessible and require signage to this effect. Smoking, table service, commercial signage and advertising are not permitted at parklets.

Public Notice
Pending parklet proposals are noticed in a manner similar to zoning applications. An application for a parklet is treated as a minor encroachment permit and an applicant is required to post a yellow zoning notice board at the location of the proposed parklet detailing their project plans. Per the minor encroachment permit process, Public Works staff will also post additional notices around the proposed parklet area for the public to submit in writing their response/questions/objections. In addition, the applicant is required to mail notices to property owners, occupants, and interested neighborhood groups within 300 feet of the proposed location.

Permitting, Fees and Appeal Process
Parklets are a form of minor encroachment (i.e., a structure in the public right-of-way), and thus parklet proposals are evaluated based on the minor encroachment procedures. Parklet applications would be charged the current fees for a minor encroachment permit. Per the pilot program, the City Manager is allowed to waive permit fees in cases of demonstrated financial hardship. (This has not occurred to date.) Other staff sections may assist Public Works staff in review of design and building code issues including accessibility review under California and Federal ADA standards. Public Works staff will continue to issue an administrative decision to permit or deny a specific parklet proposal with notice as described above. Similar to the current appeal process for minor encroachment permits, an appeal may be filed with the City Clerk and scheduled for consideration by the City Council. There has not been an appeal of a parklet to date.

Revenue Replacement
For the parklet pilot program, the Transportation Commission recommended that revenue replacement of any metered parking location used as a parklet not be required. They further recommended that parklet applicants work with staff to explore all potential means of revenue replacement, including direct payment by the applicant, installation of meters in previously un-metered locations, or other means based on the particulars of each application. To date, this has been a successful model. Of the five installed parklets in the pilot program, in three cases other offset and surplus parking was created nearby the installed parklet. Staff recommends that revenue replacement not be a requirement of the permanent program.

Design
Parklets are intended to be aesthetic improvements to the streetscape, and construction materials are required to be of high quality, durable, and attractive. The width of the parklet must not extend beyond six feet from the curb line. Safe hit posts and wheel stops, or approved equals, may be required. A visible edge to the parklet is required, which may consist of planters, railing, or cabling. The edges should be visually permeable or “see-through.” Access panels must be included in order to maintain the gutter and area underneath the parklet and the design must allow for drainage along the gutter to pass underneath the parklet. If bike parking is provided, the bike racks can be at street grade.

Other Responsibilities
The Permit Holder (or “host”) for each parklet will be required to carry insurance on the parklet and sign a maintenance agreement for the space. In the event of the cancellation or expiration of their permit, the permit holder is required to remove the parklet and restore the public right of way to its original condition within 30 days.

The goals of the parklet program are to maintain and enhance public space in Berkeley, enhance the economic sustainability of commercial and mixed use districts, and create a desirable streetscape for the public to enjoy. The length of the pilot program has provided staff (and partner organizations) an opportunity to collect data on the benefits, design, and impacts of parklets. In a recent study conducted by UC Berkeley researchers, a majority of parklet survey respondents reported experiencing ‘appreciation for a public gathering space’ related to the presence of parklets, and 96 of 175 people surveyed (55%) mentioned that they “strongly agree” that parklets are a “good use of public space.” Further, 47% of respondents reported that they “much prefer a parklet over parking spaces.”

ENVIRONMENTAL SUSTAINABILITY

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2 A total of 175 parklet survey respondents, including commercial and residential neighbors were surveyed (at four Berkeley parklet locations) in the early fall of 2017. Source: Survey data courtesy of UC Berkeley course, Architecture 110: Social & Cultural Factors in Environmental Design, A.Kim, Instructor, October 16, 2017.
Parklets improve the pedestrian environment and often include bicycle parking facilities, and therefore encourage the use of multi-modal, environmentally sustainable transportation types. The overall impact on the City’s environmental sustainability goals is positive.

RATIONALE FOR RECOMMENDATION
Parklets are publicly accessible spaces for the enjoyment and use of all citizens, and are privately constructed and maintained. Parklets are supportive of pedestrian activity, often functioning as additional seating areas for members of the public. In establishing the permanent parklet program, the City can leverage its public-right-of-way to help animate key corridors, generate significant foot traffic for its commercial and mixed-use districts and provide high quality additional public spaces to the Berkeley community.

ALTERNATIVE ACTIONS CONSIDERED
None.

CONTACT PERSON
Eleanor Hollander, Economic Development Project Coordinator, Office of Economic Development, 981-7536

Attachments:
1: Ordinance
2: Resolution
   Exhibit A: City of Berkeley Parklet Pilot Program Procedures and Conditions
3: Parklets Pilot Program (July 2, 2013)
ORDINANCE NO. #,###-N.S.

AMENDING CHAPTER 14.48 MISCELLANEOUS USE OF STREETS AND SIDEWALKS OF THE BERKELEY MUNICIPAL CODE TO ADD SECTION 14.48.300 PARKLETS AND AMENDING CHAPTER 16.18 RIGHT-OF-WAY ENCROACHMENTS AND ENCROACHMENT PERMITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 14.48.300 is added to read as follows:

14.48.300 Parklets
A. Notwithstanding anything to the contrary in this Chapter, the City of Berkeley Engineering Division of the Department of Public Works, or its successor, may approve Parklets, Benches and/or Planters in the public right of way (excluding Sidewalks alone, which are subject to and governed by Section 14.48.200) as set forth in, and in compliance with, this Section.

1. No permit may be issued under this Section for any right-of-way area in front of a single parcel if there are any current violations of this Chapter in that right-of-way area.

2. A permit for a Parklet may not be issued unless the parklet Host is in full compliance with all applicable requirements of Title 23 and any Permit issued thereunder.

3. A permit for a Parklet may only be issued adjacent to parcels in the following zoning districts: all Commercial (C-prefixed districts), Mixed-Use Light Industrial (MU-LI), Mixed-Use Residential (MU-R), and Mixed Manufacturing (MM).

B. For purposes of this Chapter, the following terms shall be defined as follows:

1. "Bench" means a seat designed for two or more persons.

2. "Bike Parking" means a location with bike racks intended for the secure parking of bicycles.

3. "Furniture" means amenities such as but not limited to tables, chairs, benches, and other equipment that facilitates the stationary use of public space.

4. "Parklet" means a platform or similar level surface extending into the public right of way with amenities such as but not limited to tables and/or chairs (including Benches), Bike Parking, and umbrellas, designated as public space, located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence.
5. "Planter" means a container that is designed or used for growing plants.

6. "Sidewalk" has the same meaning as set forth in the Vehicle Code.

7. "Sponsoring Business", "Host", "Permit Holder" or "Permittee" means, and is limited to, any establishment engaged in insuring and caring for the Parklet as set forth in the Parklet maintenance agreement.

8. "Transit Stop" means an AC Transit bus stop, UC Berkeley bus stop, a paratransit bus stop, Bay Area Rapid Transit station entrance, or another public transit provider.

C. Parklets, Benches and Planters shall fully conform to the following requirements of this subdivision:

1. Any object permitted under this Section shall leave a minimum of clear space as the Engineering Division finds necessary to protect and enhance pedestrian or vehicle traffic for public use in and around the Parklet area, as that space is determined by the City of Berkeley Engineering Division of the Department of Public Works, or its successor.

2. Parklets shall comply with applicable Americans with Disabilities Act (ADA) accessibility standards.

3. Objects permitted under this Section shall not:
   a. Unduly interfere with access by public employees and utility workers to meters, fire hydrants or other objects (street hardware) in the right-of-way;
   b. Block or obstruct the view of necessary authorized traffic devices;
   c. Unduly interfere with pedestrian traffic in the right-of-way, including the Sidewalk, pedestrian safety, traffic circulation, and/or vehicular safety;
   d. Be closer than 25 feet to any curb return or fire hydrant; except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate;
   e. Be affixed to any City or utility company-owned poles or appurtenances;
   f. Be located in the right-of-way of a California state highway;
   g. The width of the Parklet must not extend beyond six feet from the curb line, except in such cases where the geometry of the roadway has been designed to accommodate, or will accommodate, a Parklet, as determined by City staff. City staff will be defined as the Traffic Engineer, City Engineer, or Fire Marshall as appropriate.
4. All Parklets shall be subject to the following additional standards and requirements:
   
a. Parklets must remain publicly accessible and must include signage posted on site to this effect;

b. Parklet construction materials must be of high quality, durable, and suitable for public use;

c. A visible edge to the Parklet is required, which may consist of Planters, railing, or cabling. The edges should be visually permeable;

d. The Permittee shall regularly inspect and clean the Parklet and that portion of the public sidewalk adjacent to the Parklet;

e. Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet;

f. Safe hit posts and wheel stops, or approved equivalents, may be required. If Bike Parking is provided, the bike racks can be at street grade;

5. All Benches, Furniture, and Planters within the Parklet shall be subject to the following additional standards and requirements:
   
a. All proposals shall comply with any design requirements adopted by the City for Benches, Planters and/or plant material;

b. All non-secured Parklet components shall be stored in a secure location on private property when not in use;

c. Any unsecured Furniture must be clearly different from the Furniture used by a Parklet Host in order to emphasize that the Parklet is public space, as determined by City staff;

D. All permits issued under this Section shall be subject to the following conditions:

1. The Permittee shall be responsible for, and exercise reasonable care in the inspection, maintenance, and cleanliness of the area affected by any object(s) permitted by this Section, including any design requirements hereafter enacted, from the building frontage to the right-of-way, including the Parklet area.

2. The Permittee shall restrict any objects permitted under this Section to the approved location(s) and configuration, ensure compliance with all applicable laws, and the number and configuration of Benches, Furniture and Planters and overall square footage of the Parklet shall not be modified without prior approval of the Public Works Department.
3. When any objects permitted under this Section are found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, those objects shall, upon written demand of the City Manager or his or her designee, be removed or relocated in such a way as to eliminate the conflict, at the sole expense of the Permittee. Should the Permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the Permittee. Any such non-compliance shall also be a violation of this Section.

4. Permits issued under the Section, when under review prior to issuance shall be posted in plain view within the sponsoring establishment for which the permit has been issued. Public notice, permitting, and appeal for Parklets are set forth in BMC Section 16.18.060 (Permit procedure for minor encroachment) of the Berkeley Municipal Code.

5. By accepting a permit under this Section, the Permittee explicitly agrees to hold the City, its officers and employees harmless from any liability, claims, suits or actions for any and all damages alleged to have been suffered by any person or property by reason of the Permittee’s installation, operation, maintenance or removal of the Parklet, Benches and/or Planters.

6. Prior to permit approval, the Permittee shall demonstrate possession of liability insurance, in the amount not less than $1,000,000, for the Parklet including any associated Benches, Planters and Furniture. Said insurance shall name the City of Berkeley as an additional insured and shall be in a form acceptable to the City Attorney.

7. The City Manager or his/her designee may require a performance bond to ensure Parklet removal in the event of a permit cancellation.

8. The Permittee shall monitor and control the use of the Parklet to prevent disturbance of the surrounding neighborhood.

9. A Sponsoring Business or other business is not permitted to perform table service at a Parklet or otherwise incorporate a Parklet into its business operations.

10. Commercial signage, smoking, and advertising are prohibited at Parklets.

E. Parklets, Benches and/or Planters that are not permitted under this Section are prohibited encroachments under Chapter 16.18, and shall constitute public nuisances subject to the remedies in Chapter 1.26.

F. The City Council may by resolution establish fees and guidelines for the implementation and administration of this Section.

Section 2. That Berkeley Municipal Code Section 16.18.010 is amended to read as follows:
16.18.010 Definitions.

A. "Encroach" means constructing or placing permanent structures or improvements over, upon, under, or using any public right-of-way or watercourse in any manner other than its intended use.

B. "Encroachment" shall include any of the following acts:

1. Erecting or maintaining any flag, banner, decoration, post, sign, pole, fence, guard-rail, wall, loading platform, mailbox, pipe, conduit, wire, or other structure on, over, or under a public right-of-way;

2. Constructing, placing, or maintaining, on, over, under, or within the public right-of-way any subsurface drainage structure or facility, any pipe, conduit, wire or cable;

C. "Major encroachment" means any permanent improvement attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, earth retaining structures over three feet above grade, structure connected planter boxes, ramps, or fences over six feet above grade. Improvements identified in chapters 16.04, 16.24 and 17.16, and any items conforming to the Berkeley Building Code, shall not be considered Major encroachments. Projections over any part of the public right-of-way that are not permitted by or which are in excess of the limitations specified in the Berkeley Building Code shall also be classified as major encroachments, including theatre marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

D. "Minor encroachment" means encroachment into the public right-of-way resting on or projecting into the sidewalk area such as: subsurface tiebacks and soil nails; concrete stairs; disabled Access Ramps where more than six feet of sidewalk area is preserved; subsurface foundations extending less than 2 feet from the property line; level landings for garages; landscape features less than two feet in height; conduit for privately owned phone and data lines connecting buildings owned by the permittee; flower pots; permanent planter boxes; clocks; bus shelters; phone booths; bike racks; fences less than six feet above grade; earth retaining structures less than three feet above grade; benches; Parklets, as defined in Section 14.48.300; and curbs around planter areas. Any encroachment which is not a minor encroachment is a major encroachment.

E. "Assistant City Manager for Public Works" includes the Assistant City Manager for Public Works and his/her authorized delegate.

F. "Permittee" means any person(s) firm, company, corporation, association, public agency, public utility, or organization and the permittee’s successors-in-interest which has been issued a permit for said encroachment by the Assistant City Manager for Public Works. All obligations, responsibilities, and other requirements of the permittee as herein described, shall be binding on successors in interest of the original permittee and
subsequent owners of the property benefitted by the encroachment unless otherwise specified in the permit

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way within fifteen calendar days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.
RESOLUTION NO. ##,###-N.S.

RESCINDING THE PROCEDURES AND CONDITIONS FOR THE PILOT PARKLET PROGRAM

WHEREAS, on May 15, 2018, the Council of the City of Berkeley adopted the first reading of an Ordinance establishing Parklets as an approvable use in the public right of way; and

WHEREAS, the Ordinance, to be codified in Berkeley Municipal Code Section 14.48.300, establishes regulations for parklets in the public right-of-way; and

WHEREAS, on July 3, 2013, the Council of the City of Berkeley adopted Resolution No. 67,940-N.S. establishing procedures and conditions for a pilot program of parklets; and

WHEREAS, this Procedures and Conditions document, included herein as Exhibit A, provided guidelines for the implementation of the pilot program, and a procedure for the permitting and review of parklets in the public-right-of-way; and

WHEREAS, BMC Section 14.48.300 captures and modifies the procedures and conditions initially set forth by the pilot program for the permitting and review of parklets in the public right-of-way, and codifies a permanent parklet program.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Resolution No. 67,940-N.S., adopted on July 2, 2013 to establish the Procedures and Conditions for the Parklet Pilot Program, is hereby rescinded on July 1, 2018.

Exhibit
A: City of Berkeley Parklets Pilot Program Procedures and Conditions
Exhibit A

Parklets Pilot Program Procedures and Conditions

Procedures:
1. Length of Pilot Program: 3 Years
2. Number: Up to 10 Parklets
3. Location: Commercial Zoning Districts
4. Public Notice: Per BMC AUP procedures, 300 foot radius
5. Permitting and Appeal: By Public Works Staff as lead
   Minor encroachment fees apply
6. Revenue Replacement: Not required

Conditions:
- Carry Insurance
- Sign a Maintenance Agreement
  - Keep all plants in good health
  - Keep the Parklet free of debris and grime
  - Adequately maintain the surface.
  - Sweep out debris from under the Parklet on an as-needed basis.
  - Once a year before the rainy season, move the Parklet to allow street sweepers underneath if required by Public Works.

- Schedule for removal
- Performance bond for removal
- Public Space Signage
- No Smoking Signage
To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development

Subject: Parklets Pilot Program

RECOMMENDATION
Affirm by motion the recommendation of the Transportation Commission to move forward with a three year pilot program allowing up to ten parklets in the commercial districts of the City of Berkeley subject to the procedures and conditions attached to the staff report.

FISCAL IMPACTS OF RECOMMENDATION
Parklets may cause a reduction in parking revenues. The exact amount cannot be determined since the applications for parklets have not been submitted.

CURRENT SITUATION AND ITS EFFECTS
A Parklet is the temporary use of space in the dedicated public right-of-way (parking spaces, unused bus stops, and other types of vehicular and non-vehicular zones) for public uses such as seating or bicycle racks. Several surrounding cities, including San Francisco and Oakland, have begun allowing parklets. There is growing interest in parklets in the City of Berkeley. Staff is recommending the City of Berkeley adopt a pilot program to allow parklets. If the pilot program is successful, staff will propose changes in the municipal code governing the location and installation of parklets in Berkeley.

BACKGROUND
Parklets are publicly accessible space for the enjoyment and use of all citizens, and are privately constructed and maintained. It is envisioned that the Parklets will be located in areas with pedestrian activity, as additional seating areas for retail patrons, and in areas where there is a desire to create a more pedestrian-friendly environment.

Parklets are intended to be seen as pieces of street furniture, providing aesthetic enhancements to the overall streetscape. In place of car parking, a platform is built to extend the grade of the sidewalk into the street. Once the platform is installed, benches, tables, chairs, landscaping, and bike parking can all be placed on top in order to create a Parklet. Parklets must remain publicly accessible and will require signage to
this effect. Table service is not permitted. Commercial signage and advertising are not permitted.

The Transportation Commission considered the staff proposal for the pilot program at their May 16, 2013 meeting. The Transportation Commission (M/S Schneider/Broaddus 6-0-0-1 Ayes: Broaddus, Lathbury, McCaughrin, Roberts, Schneider, Smulka Noes: None Abstain: None Absent: Watson) recommended an expanded pilot program be forwarded to the City Council for consideration.

KEY ISSUES
Number and Location
The Transportation Commission recommended the pilot program be available in the commercial districts and allow up to ten total parklets. Consideration was given to parklets in manufacturing and residential districts but a decision on those districts was put off until the experience with the commercial districts was available.

Public Notice
The Transportation Commission accepted the staff recommendation that parklet proposals be noticed in a manner similar to other zoning applications. An applicant for a parklet would post a notice board like the yellow zoning notice board at the location of the proposed parklet. In addition, they would mail notices to property owners, occupants and interested neighborhood groups within 300 feet of the proposed location. Once a decision to approve or deny a particular parklet location is made, it is also recommended that notice of that decision is mailed to the same recipients.

Permitting and Appeal
Staff believes that parklets are a form of minor encroachment, i.e. non-permanent structure in the public right-of-way, and parklet proposals should be evaluated based on the minor encroachment procedures. The Transportation Commission accepted the staff recommendation that for the pilot program Public Works would be the lead agency for processing parklet applications. Parklet applications would be charged the current fees for a minor encroachment permit which total approximately $1,700. The Transportation Commission recommended that the City Manager be allowed to waive fees in cases of demonstrated financial hardship.

Several other staff sections would assist PWA staff including Planning staff on design and building code issues including accessibility review under California and Federal ADA standards. PWA staff would issue an administrative decision to permit or deny a specific proposal with notice as described above. Should anyone wish to appeal the decision, appeals would be filed with the City Clerk and be scheduled for consideration by the City Council. This is similar to the current appeal process for minor encroachment permits. Currently, there is no board or commission set up to process parklet applications. If a permanent program is recommended a board or commission may be designated to handle these applications.
In addition, the Transportation Commission added a performance component such that an issued parklet permit must be installed in a time certain or the pilot program slot will be given to the next applicant in line.

**Revenue Replacement**
The Transportation Commission recommended that revenue replacement of any metered parking location used as a parklet not be required. They further recommended that parklet applicants work with staff to explore all potential means of revenue replacement, including direct payment by the applicant, installation of meters in previously un-metered locations, or other means based on the particulars of each application.

**Length of Pilot Program**
The Transportation Commission recommended the pilot program be authorized for three years. This would allow for sufficient time to collect data on the benefits and impacts of parklets. This data will be used to make a recommendation on adopting a permanent parklet program or discontinuing allowing parklets. If a permanent program is recommended, the three years of experience will help staff make recommendations for a permanent ordinance. The Transportation Commission accepted the staff recommendation that applicants who install parklets be allowed to continue the operation of the parklet for up to two years after the pilot program ends if a permanent ordinance is not adopted or have up to two years to modify, if necessary, their parklet to conform to the permanent ordinance. The two years would be in the form of two one year extensions contingent on compliance with any maintenance and operational requirements attached to the approved application.

**OTHER ISSUES**

**Proposed Responsibilities**
The Permit Holder for each Parklet will be required to meet all requirements and conditions of their Permit. In addition, Permit holders will be required to do the following:

1) **Carry Insurance.** As required and in an amount specified by the City, naming the City as an additional insured.

2) **Sign a Maintenance Agreement.** Sign a Maintenance Agreement with the City of Berkeley that will require the Permit Holder to do the following:
   a. Keep all plants in good health
   b. Keep the Parklet free of debris and grime
   c. Adequately maintain the surface.
   d. Sweep out debris from under the Parklet on an as-needed basis.
   e. Once a year before the rainy season, move the Parklet to allow street sweepers underneath if required by Public Works.
A schedule for removal of Parklet improvements and for restoration of public improvements will be required as part of the Maintenance Agreement. This schedule should demonstrate that such removal and restoration will be complete upon expiration of the permit.

A performance bond or other security will also be required to secure removal of parklet improvements at the time of their expiration and to restore the site to its prior condition.

Unsecured furniture is not permitted after business hours if the Permit Holder is a business. If the Permit Holder is not a business, the hours for unsecured furniture will need to be included in the Maintenance Agreement. Any unsecured furniture will have to be clearly different from the furniture used by a business in order to emphasize that the parklet is public space.

Secured furniture is allowed. Consideration must be given to how the space can be used when the adjacent business is closed to prevent the area from becoming dead space.

Signage must be installed to clearly indicate that the parklet is public space. In addition, “No Smoking” signs should be installed as the parklets are extensions of the sidewalk and sidewalks in commercial areas are smoke free.

Proposed Design Parameters
Parklets are intended to be aesthetic improvements to the streetscape, and materials will be required to be of high quality, durable, and attractive. The width of the Parklet must not extend beyond six feet from the curb line. Safe hit posts and wheel stops, or approved equals, may be required. A visible edge to the Parklet is required, which may consist of planters, railing, or cabling. The edges should be visually permeable or “see-through.” Access panels must be included in order to maintain the gutter and area underneath the Parklet and the design must allow for drainage along the gutter to pass underneath the Parklet.

If bike parking is provided, the bike racks can be at street grade.

RATIONALE FOR RECOMMENDATION
A pilot program will allow the City of Berkeley time to see if parklets are a useful addition to the public rights-of-way. In addition, it will provide real world experience on which to base a permanent ordinance if the program proves successful.

CONTACT PERSON
Eric Angstadt, Director, Planning and Development, 981-7401

Attachments:
1. Parklets Pilot Program Procedures and Conditions
Parklets Pilot Program Procedures and Conditions

Procedures:
1. Length of Pilot Program: 3 Years
2. Number: Up to 10 Parklets
3. Location: Commercial Zoning Districts
4. Public Notice: Per BMC AUP procedures, 300 foot radius
5. Permitting and Appeal: By Public Works Staff as lead
   Minor encroachment fees apply
6. Revenue Replacement: Not required

Conditions:
- Carry Insurance
- Sign a Maintenance Agreement
  - Keep all plants in good health
  - Keep the Parklet free of debris and grime
  - Adequately maintain the surface.
  - Sweep out debris from under the Parklet on an as-needed basis.
- Once a year before the rainy season, move the Parklet to allow street sweepers underneath if required by Public Works.

- Schedule for removal
- Performance bond for removal
- Public Space Signage
- No Smoking Signage