

City Council Meeting: February 28, 2023

Santa Monica, California

ORDINANCE NUMBER 2737(CCS)  
(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA MONICA  
AMENDING CHAPTER 6.42 OF THE SANTA MONICA MUNICIPAL CODE THAT  
ESTABLISHED THE OUTDOORS PARKLET PROGRAM

WHEREAS, on June 8, 2021, the City Council adopted Emergency Ordinance No. 2673, establishing Santa Monica Municipal Code Chapter 6.40, which implemented the Santa Monica Outdoors Pilot Program and continued the authorization originally provided in the City's supplements to its declaration of the existence of a local emergency for eligible businesses temporarily to use certain outdoor public property for dining and other business activities; and

WHEREAS, parklets installed in parking or loading spaces have been an especially popular component of the Santa Monica Outdoors Pilot Program, with over 90 businesses obtaining a Pilot Program permit to operate parklets to conduct business activities; and

WHEREAS, local businesses, residents, and visitors who have responded to City surveys have expressed strong support for continuing to allow parklets in Santa Monica; and

WHEREAS, City staff has developed a comprehensive parklet program that helps activate public spaces for community enjoyment, placemaking, and economic recovery while also maintaining public safety and recovering City maintenance and improvement costs; and

WHEREAS, the Santa Monica Outdoors Pilot Program expired on September 30, 2022; and

WHEREAS, the implementation of the Santa Monica Outdoors Parklet Program under Chapter 6.42 has permitted the City to identify areas of the program that can be modified and clarified to further support the City's interest in maintaining a thriving business community and protecting the health, safety, and economic welfare of its citizens and businesses; and

WHEREAS, City Council now desires to amend the Santa Monica Municipal Code Chapter 6.42 to allow for an increase in the maximum number of parking and loading spaces for the operation of a parklets provided certain conditions are met and clarify the responsibilities of eligible businesses that operate parklets under the Outdoors Parklet Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 6.42.020 of the Santa Monica Municipal Code is hereby amended to read as follows:

**6.42.020 Santa Monica Outdoors Parklet Program Authorization**

(a) Except as provided in subsection (b), the Director is authorized to issue parklet permits to and enter into licensing agreements with eligible businesses that meet the requirements of this Chapter and administrative regulations.

(b) For eligible businesses with an existing Santa Monica Outdoors pilot program permit under Santa Monica Municipal Code Chapter 6.40 to operate a parklet, the Director is authorized to issue provisional permits and enter into licensing agreements with such businesses that have submitted a completed application in compliance with the requirements of this Chapter and

administrative regulations by no later than September 15, 2022. The term of the provisional permit and the transition to a non-provisional parklet permit shall be set forth in administrative regulations.

(c) For eligible businesses that meet the conditions for the operation of a parklet on up to four parking or loading spaces pursuant to subsection (e) of Section 6.42.030, the Director is authorized to issue provisional permits and enter into licensing agreements with such businesses that have submitted a completed application in compliance with the requirements of this Chapter and administrative regulations by no later than June 30, 2023. The term of the provisional permit and the transition to a non-provisional parklet permit shall be set forth in administrative regulations.

SECTION 2. Section 6.42.030 of the Santa Monica Municipal Code is hereby amended to read as follows:

**6.42.030 Santa Monica Outdoors Parklet Program Requirements**

(a) **Application Required.** Any eligible business seeking to obtain an initial permit or renew such a permit shall submit an application using a form designated by the Director for that purpose. Renewal applications shall be filed a minimum of thirty days prior to the expiration of any existing parklet permit issued pursuant to this Chapter.

(b) **Permit and Licensing Agreement Required.** No person may operate a parklet without having obtained a permit from and entered into a licensing agreement with the City. A permittee may utilize the parklet to conduct business

activities as authorized by this Chapter, the administrative regulations, the permit, and licensing agreement.

(c) **Posting of Parklet Permit.** The permit shall be displayed by the eligible business during business hours.

(d) **Street Limitation.** An eligible business may obtain a permit only in streets that have: (1) a speed limit of twenty-five miles per hour or less; (2) a speed limit of thirty miles per hour and a Class II bikeway, as that term is defined by California State & Highway Code Section 890.4; or (3) a speed limit of thirty miles per hour without a Class II bikeway, so long as the Director approves additional design or safety specifications. There may be no parklets on the Third Street Promenade or the Santa Monica Pier.

(e) **Parking or Loading Space Limitation.** An eligible business may obtain a permit for use of up to two parking or loading spaces. An eligible business may obtain a permit for use of up to two additional parking or loading spaces, for a total of up to four spaces, provided such additional spaces are adjacent to the parking or loading space(s) fronting the eligible business and meet all of the conditions listed in this subsection (e).

(1) The City permitted the eligible business to operate a parklet on the proposed additional parking or loading spaces under the Santa Monica Outdoors Pilot Program pursuant to Santa Monica Municipal Code Chapter 6.40.

(2) The eligible business provides documentary proof of consent for the use of the proposed additional parking or loading spaces for the term of the licensing agreement from the business operator(s) and property owner(s), or their

authorized agents, of an adjacent ground-floor property fronting the proposed parking or loading space(s) in a form and under the terms prescribed by the Director.

i. However, in the event there is no ground-floor business operator of the adjacent property fronting the proposed additional parking or loading spaces, then the eligible business shall provide with its initial or renewal application for a permit documentary proof of consent from the property owner, or authorized agent, of the adjacent ground floor property fronting the proposed parklet.

ii. Where an eligible business obtains consent from the adjacent business operator, but does not obtain the property owner's consent, the eligible business may operate the proposed parklet unless either a new business operator of the adjacent ground floor property fronting the permitted parklet or the adjacent property owner request removal of the parklet.

(3) City determines that a parklet on the proposed additional parking or loading space(s) would not unreasonably interfere with City maintenance and use activities and would not pose an unreasonable risk to public health, safety, or welfare.

The authorization for use of up to two additional parking or loading spaces to operate a parklet under this subsection (e) shall lapse and terminate should the eligible business, or successor-in-interest, fail to continuously utilize the parking or loading spaces to operate a parklet as set forth in this section for a period of ninety days following December 31, 2023.

(f) **Consent of Business Operator or Property Owner Required.** If the eligible business is not the ground-floor business operator of the property fronting the parking or loading space proposed to be used as a parklet or if half or more of such a space would be outside of the eligible business's ground-floor frontage, the eligible business shall provide with its initial or renewal application for a permit documentary proof of consent, for the term of the licensing agreement, from the business operator(s) and property owner(s) fronting the parking or loading spaces proposed to be used as the parklet. The consent required under this subsection shall be provided in the form and under the terms prescribed by the Director.

(1) In the event there is no ground-floor business operator of a property fronting the parking or loading spaces proposed to be used as a parklet, then the eligible business shall provide with its initial or renewal application for a permit documentary proof of consent from the fronting property owner or its authorized agent.

(2) Where an eligible business obtains consent from the business operator of a property fronting the proposed parking or loading spaces to be used as the parklet but does not obtain the property owner's consent, the eligible business may operate a permitted parklet unless either a new business operator of the ground floor property fronting the permitted parklet or the property owner request removal of the parklet.

(g) **Compliance with Design and Safety Specifications.** The construction of and the operation of a parklet pursuant to a permit shall comply with the

design and safety specifications set forth in administrative regulations issued under this Chapter.

(h) **Maintenance.** A permittee shall, at its own expense, be responsible for the maintenance of the parklet and keeping the parklet in a clean and sanitary condition.

(i) **Hours of Operation.** The hours of operation of the parklet shall be limited to the hours of operation of the associated eligible business, subject to further limitations as the Director may provide by administrative regulations.

(j) **Insurance Required.** A permittee shall maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time, as determined by the Risk Manager, and name the City of Santa Monica as an additional insured.

(k) **Indemnification and Hold Harmless.** Before a permit is issued, the eligible business shall agree to indemnify, defend, and hold the City harmless from any and all loss, damages, liability, claims, suits, costs, or expenses arising from or in any way connected to the eligible business's use of the parklet, including, but not limited to, any injury to person or property, failure to comply with the Americans with Disabilities Act, or the condition of the parking or loading space that is the subject of the permit. In the case of an eligible business with an expired permit or licensing agreement, such eligible business is subject to this subsection if the eligible business maintains or operates a parklet on the public right-of-way after expiration of the permit or licensing agreement regardless of whether the eligible business conducts business activities on the parklet.

(l) **Compliance with Administrative Regulations.** A permittee shall comply with any other permit requirements or conditions set forth in the administrative regulations issued under this Chapter.

(m) **Duty to Comply with the Law.** A permittee shall comply with all applicable Federal, State, and City laws, rules, and regulations, including, but not limited to, the requirement to have a current business license, the noise restrictions in Chapter 4.12 of this Code, the protection of public trees in compliance with Chapter 7.40 of this Code, and compliance with the Americans with Disabilities Act.

SECTION 3. Section 6.42.040 of the Santa Monica Municipal Code is hereby amended to read as follows:

**6.42.040 Fees, Charges, and Security Deposit**

(a) **Fees and Charges.** The City Council may establish by resolution application and permit fees and charges, which shall:

- (1) Defray the City's costs in administering and enforcing the provisions of this Chapter; and
- (2) Reflect charges associated with use of public property pursuant to this Chapter.

(b) **Security Deposit.** Every applicant for a permit shall pay to the City a security deposit in an amount established by the Director, or designee. Such security deposit shall not exceed an amount necessary to recover the City's estimated costs to remedy a permittee's failure to comply with its permit and licensing agreement obligations. Following termination or revocation of the



permit, the security deposit may be applied to remedy a permittee's failure to comply with an obligation under the licensing agreement, including but not limited to, repairing any damage to the parking or loading space that the permittee failed to restore to its original condition and to remove a parklet, any personal property, furnishings, barriers, and other material that a permittee fails to remove. The remainder, if any, of the security deposit shall be refunded to the permittee.

SECTION 4. Section 6.42.060 of the Santa Monica Municipal Code is hereby amended to read as follows:

**6.42.060 Grounds for revocation, suspension, or denial; appeals.**

(a) The Director may deny an initial or renewal application for or suspend or revoke a permit if the eligible business, including its employees, managers, officers, principals, directors, owners, contractors, representatives, or agents:

- (1) Has made a materially false, misleading, or fraudulent statement of fact or omission of fact to the City on the permit application, during the application process, or in connection with operating a parklet pursuant to a permit;
- (2) Operates, has operated, or proposes to operate in a manner that endangers public health or safety; or
- (3) Fails to comply or has failed to comply with any requirement imposed by the provisions of this Code (or successor provision or provisions), including any administrative regulations issued pursuant to this Chapter, or any provision of State or Federal law.

(b) In addition to the grounds set forth in subsection (a), the Director, in his or her discretion, may:

(1) Deny an initial or renewal application for a permit, if the Director determines that the parklet interferes with a planned or future City project, regular City maintenance of the public right-of-way, utility access, disabled parking, loading zones, bus zones, curbside drainage, or does not provide accessibility to individuals with disabilities per the Americans with Disabilities Act;

(2) Immediately suspend or revoke a permit if the Director determines that there is an emergency situation that poses a risk to public health, safety, or welfare, in which case the Director shall provide written notice of suspension or revocation to the permittee as soon as reasonably practicable; or

(3) Suspend or revoke a permit for any other reason when it is in the best interests of the City after providing the permittee thirty days' written notice.

(c) Any decision by the City under this Chapter to deny an application for or suspend or revoke a permit may be appealed by an aggrieved applicant or permittee. An appeal must be taken within the time and manner set forth in Chapter 6.16 of this Code.

SECTION 5. Section 6.42.100 of the Santa Monica Municipal Code is hereby amended to read as follows:

#### **6.42.100 Enforcement**

- (a) Any person who violates any provision of this Chapter, including any administrative regulations, shall be guilty of an infraction, which shall be punishable by a fine not exceeding two hundred fifty dollars, or a misdemeanor, which shall be punishable by a fine not exceeding five hundred dollars per violation or by imprisonment in the County Jail for a period not exceeding six months or by both such fine and imprisonment.
- (b) Any person who violates any provision of this Chapter, including any administrative regulations, shall be subject to administrative fines and administrative penalties pursuant to Chapter 1.09 and Chapter 1.10 of this Code.
- (c) Any person convicted of violating this Chapter in a criminal case, or found to be in violation of this Chapter in a civil or administrative case brought by a law enforcement agency, shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative and abatement costs.

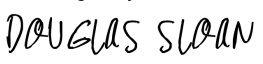
SECTION 6. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would

have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:

DocuSigned by:  
  
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Douglas Sloan, City Attorney

Approved and adopted this 28<sup>th</sup> day of February, 2023.

DocuSigned by:

*Gleam Davis*

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Gleam Davis, Mayor

State of California           )  
County of Los Angeles       ) ss.  
City of Santa Monica        )

I, Nikima Newsome, Assistant City Clerk of the City of Santa Monica, do hereby certify that the foregoing Ordinance No. 2737 (CCS) had its introduction on February 14, 2023 and was adopted at the Santa Monica City Council meeting held on February 28, 2023, by the following vote:

AYES:       Councilmembers Brock, de la Torre, Parra, Torosis, Zwick  
              Mayor Davis, Mayor Pro Tem Negrete

NOES:       None

ABSENT:   None

ATTEST:

DocuSigned by:

*Nikima Newsome*

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Nikima Newsome, Assistant City Clerk

3/7/2023

Date

A summary of Ordinance No. 2737 (CCS) was duly published pursuant to California Government Code Section 40806.