

ENCROACHMENT PERMIT
FOR NON-PERMANENT ENCROACHMENTS
ON CITY PARKING SPACE
(RESTAURANT PARKLET)

TO APPLICANT: [Business Name]
[Name of Owner/Manager/Individual]
[Address 1]
Burlingame, CA 94010
[Phone Number/Contact Information]

In response to your request dated [DATE] and subject to all of the terms, conditions and restrictions set forth herein, permission is hereby granted under this Encroachment Permit for Non-Permanent Encroachments on City Parking Space(s) for a restaurant parklet, for the benefit of the real property commonly known as [property address] in the City of Burlingame, County of San Mateo, State of California.

1. Definitions. Unless the context otherwise requires, the terms defined in this section shall, for the purposes of this Encroachment Permit, have the meanings herein specified.

“**APPLICANT**” means the tenant, business and/or individual seeking this Encroachment Permit for a restaurant parklet on behalf of [name of tenant/business/APPLICANT] at [property address].

“**City**” means the City of Burlingame, its Council, officers, agents or employees.

“**Encroachment**” means any structure or object of any kind or character which is placed on, within, under, or over any portion of the public right-of-way or property owned by the City of Burlingame.

“**Encroachment Permit**” or “**Permit**” means this Encroachment Permit issued to APPLICANT dated _____.

“**Property**” means the real property commonly known as [property address].

2. Revocability; Waiver. This Encroachment Permit is revocable at any time by the City, under this provision for any or no reason, within the City’s sole discretion. The City may revoke this Encroachment Permit with fifteen (15) calendar days’ notice provided to APPLICANT. By accepting this Encroachment Permit and performing the work as contemplated herein,

APPLICANT expressly waives any and all claims and causes of action that it may have against the City, its Council, officers, agents or employees, relating to or arising out of the revocation of this Permit in accordance with this section and the terms and provisions herein, including, without limitation, any and all claims or liability pertaining to or resulting from interruption of business activities and/or operations or losses.

3. Acceptance of Provisions. APPLICANT hereby agrees that placing any encroachments on, within, under, or over any portion of the public right-of-way or City-owned property pursuant to this Encroachment Permit shall constitute an acceptance of the terms and conditions provided herein and under Chapter 12.10 of the Burlingame Municipal Code, which may be amended from time to time. APPLICANT further agrees and hereby certifies that APPLICANT has read and understands the terms and conditions of this Permit and Chapter 12.10 of the Burlingame Municipal Code and that APPLICANT shall observe, conform and comply with all requirements.

4. Acceptance of Annual Parklet Fee and Monthly Cleaning Fee. APPLICANT hereby agrees to an annual parklet fee of \$1,590.00 and monthly cleaning fee \$265.00 in consideration for the use of the public right-of-way. Fees will increase on an annual basis based on the consumer price index. The annual parklet fee will be due by February 1st of each year and the cleaning fee will be invoiced quarterly to the APPLICANT. Failure to pay either fee by the respective due date may result in the City immediately initiating revocation of APPLICANT's permit.

5. No Conveyance of Property Interest; No Precedent Established. This Encroachment Permit is granted to APPLICANT with the understanding that this action is not to be considered or in any way construed as granting or conveyance of any franchise or property interest of any kind to APPLICANT, nor does it establish any precedent on the question or issue of expediency of permitting any encroachment on, within, under, or over any portion of the public right-of-way or City-owned property.

6. Permit on Premises. A fully executed copy of this Encroachment Permit with the attached Exhibit "A" shall be kept by APPLICANT on premises at the Property during business

hours, and shall promptly be made available upon request by any representative of the City, law enforcement personnel, or government health official.

7. Removal of Object or Structure. Whenever construction, reconstruction, repair, or maintenance work on, within, under, or over any portion of the public right-of-way or property owned by the City may require, upon the City's request, APPLICANT shall immediately remove any encroachments placed on, within, under or over any portion of the public right-of-way or property owned by the City pursuant to this Encroachment Permit, at the sole cost and expense of APPLICANT. Should APPLICANT fail to comply with the request for removal as directed by the City, the City may, by its own forces or by contract, remove the encroachments and assess the cost and/or expense of removal against APPLICANT.

8. Indemnity. APPLICANT hereby agrees to defend, indemnify and hold harmless the City, its Council, officers, agents and employees from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs of litigation and attorneys' fees) of any nature, kind or description, which may be brought against, suffered or sustained by the City, its Council, officers, agents or employees, arising or resulting directly or indirectly from the issuance of this permit or relating to or arising out of the placement or use of the encroachments or the performance of any services or work as provided herein.

9. Liability Insurance. As a condition of this Encroachment Permit, APPLICANT shall furnish the City with an original Certificate of Insurance and Insured Endorsement with the City of Burlingame listed as additional insured, prior to any commencement of work and in a form acceptable by the City Attorney, for any and all claims or liability relating to or arising out of the placement or use of the encroachments or the performance of any services or work provided herein. Insurance shall be in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate and may be obtained as part of an umbrella or similar coverage for APPLICANT and the business located at the Property. Each policy shall provide for a minimum of ten (10) days written notice of cancellation to City. All insurance shall be primary and shall name the City as additional insured. A current Certificate of Insurance and Insured Endorsement must be on file with the City Engineer.

10. Maintenance and Repair. APPLICANT agrees to exercise reasonable care in its duty to inspect, maintain and promptly repair any and all encroachments granted under this Encroachment Permit. In the event that any use or maintenance of the encroachments by APPLICANT or its agents, employees or invitees, directly or indirectly causes any damage to any portion of the public right-of-way or City-owned property, APPLICANT shall, at its sole cost and expense, promptly make the repair or maintenance necessary, subject to the City's prior approval if such prior approval is required. The City may also, in its sole discretion, perform the necessary repair or maintenance themselves, and assess the cost of repair to APPLICANT. Inadequate or insufficient maintenance or repair as determined by the City in its sole judgement and discretion may result in the revocation of this Permit.

11. Quarterly Inspections by Building, Fire, and Public Works Departments. For the public health and safety, quarterly inspections will be conducted and by the Building, Fire, and Public Works Departments of the parklets for conformance to the parklet design standards as well as conditions stated below. APPLICANT agrees that these inspections will be billed based on the individual department fee schedule, and fees will be included with, and in addition to, the APPICANT'S cleaning fees that will be invoiced quarterly. Based on the current fee schedule, the estimate for the quarterly inspection is \$1,096.00; however, this amount is only an estimate, and should not be relied upon by APPLICANT. Additional inspections and fees may occur for noncompliance issues.

12. Parklet Design Standards. Any encroachments granted under this Encroachment Permit shall abide by the below Design Standards, which may be amended from time to time by the City. Should the City provide additional Design Standards, it will provide notice of these changes to the address currently on file for this permit. Any deviation from these standards may result in the immediate revocation of this permit.

- a. Parklet structure must be constructed within the City issued and maintained longitudinal channelizing device water barriers. Water barriers are placed within the parking space and marked by City officials. Relocation of any water barriers outside of the marked parking space is prohibited.
- b. Parklet structure must be free standing, constructed with proper bracing and positive attachments, be elevated to match sidewalk grade, and be designed to be accessible to people with disabilities.

- c. The parklet cannot be erected within 3 feet of a fire hydrant.
- d. Elevated parklet must not impede stormwater runoff along the gutter pan and must have a required clear pathway opening under the parklet as tall as the curb height and a minimum of 9-inches wide.
- e. Parklet flooring must be removable for City and/or Public Utility Company's access to manhole covers, fire hydrant shut-off valves, vaults, and to accommodate inspection access for San Mateo County Mosquito and Vector Control District.
- f. Screening fabric/canvas/panels are allowed to cover the water barriers so long as City staff has access to the water opening caps for maintenance purposes. City staff shall have sole discretion of whether adequate access exists.
- g. Outdoor electrical wiring is permitted if it is strung, supported, and achieves a minimum of 8 foot vertical clearance from the sidewalk surface. Outdoor lighting is permitted only if a private circuit supplying the fixture is sized properly and is protected by a Ground Fault Circuit Interrupter. Electrical wiring/lighting is prohibited to hang from or in front of the water barriers.
- h. The use of service stations will be permitted so long as they are positioned against the building wall, closest to the entrance.
- i. Any roof covering installations must have a vertical clearance of 8 feet from the sidewalk surface, and shall be placed within the parklet area.

13. Additional Conditions.

- a. No advertising (including advertisements) is allowed on or within the parklet.
- b. Use of public electrical receptacles and City infrastructure is prohibited, unless expressly granted by the City in writing in advance.
- c. Use of electrical heaters and/or open flames as source of heat, in and/or around the parklet is prohibited.
- d. Use of outdoor propane gas heaters inside any portion of the parklet is prohibited. Storage of propane tanks must comply with fire department requirements.
- e. No portion of the parklet may encroach into any red-marked curb or into required fire access road width by any margin.
- f. Gas appliances and combustible decorative materials are prohibited. City staff shall have sole discretion on whether a decorative material is considered "combustible."
- g. Tent structures must meet fire-resistance fabric requirements in accordance with the California State Fire Marshal's Office. Proof of fire-resistance certification required.
- h. Maximum occupant load within the parklet must be calculated by dividing the total square footage by the square footage factor of 15. An occupant load sign must be visible to City staff from the public right of way.
- i. The establishment is responsible for keeping their business frontage sidewalk and parklet area clean at all times.
- j. The establishment and its patrons are not allowed to use the City's receptacles for disposal of any waste generated by the operation of the business.
- k. Seating and/or business operations in the parklet must be used at least four (4) days per week. Check which days the parklet will be used.
 - Mondays Tuesdays Wednesdays Thursdays
 - Fridays Saturdays Sundays
- l. At the request of the Building Department, the applicant may be required to submit a letter from a State licensed professional/contractor to certify that the parklet structure

is constructed to meet local and state requirements, and Americans with Disabilities Act 2010 Standards for the purpose of outdoor dining.

14. All sales, service or consumption of alcoholic beverages must be in compliance with the California Alcoholic Beverage Control Act as described in Division 9 of the California Business and Professions Code and any implementing regulations or other applicable laws.

15. No person, including, without limitation, APPLICANT's invitees, agents and employees, shall use any encroachment in such a manner as to obstruct, hinder, delay or inconvenience the free passage or use of any street, sidewalk, passageway, or other public place. If any encroachment is determined to pose a safety risk or impede or inconvenience the public or the flow of pedestrian or vehicular traffic, the City may cause the encroachment to be removed without notice at the sole cost or expense of APPLICANT.

16. APPLICANT is responsible for the design/use of the parklet for outdoor dining and that it is accessible/meets the Americans with Disability Act 2010 Standards.

17. Smoking in any indoor or outdoor restaurant dining area is prohibited by Burlingame Municipal Code Section 8.18.040(a)(5).

18. APPLICANT hereby agrees that it is APPLICANT's sole responsibility to ensure that its invitees, agents and employees, including, without limitation, any user of the encroachments, comply with all terms, conditions, and requirements of this Encroachment Permit and the Burlingame Municipal Code.

ENFORCEMENT PROCEDURES:

1. Violations of this Encroachment Permit may be prosecuted in accordance with Title 1 of the Burlingame Municipal Code, as well as through any other legal means available. By seeking this Permit, APPLICANT acknowledges and accepts that violations of the terms and conditions herein may be addressed by any of the enforcement procedures set forth in the Burlingame Municipal Code, at the election and in the sole discretion of the City.

2. A representative of the City may conduct an inspection of the Property upon receipt of a complaint as a part of an investigation to determine whether a violation of this Permit or the Burlingame Municipal Code exists. The City will conduct quarterly inspections to ensure that compliance with the Permit and the Burlingame Municipal Code is maintained at all times. In the

event that a violation is observed or determined by the City to exist at the Property, a Notice of Violation may be issued to APPLICANT in accordance with enforcement procedures set forth by the Burlingame Municipal Code.

3. Alternatively, or in addition to the City's code enforcement procedures, the Department of Public Works may suspend or revoke this Permit for failure to adhere to the terms, conditions or requirements contained herein.

REVIEWED BY: _____
Michael Guina , City Attorney

ACCEPTED BY: CITY OF BURLINGAME
By: _____
Art Morimoto, Assistant Public Works Director

[NAME OF TENANT/BUSINESS/APPLICANT]

By: _____
[Name of Signatory for APPLICANT]
Title: [insert]