

ORDINANCE NO. 5746

AN ORDINANCE AMENDING THE CITY OF WATERLOO CODE OF
ORDINANCES BY ESTABLISHING A NEW ARTICLE H, PARKLET,
OF CHAPTER 4, BUSINESSES RELATING TO SALES, OF TITLE 3,
BUSINESS AND LICENSE REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WATERLOO, IOWA AS FOLLOWS:

Section 1. That the City of Waterloo Code of Ordinances is hereby amended by establishing a new Article H, Parklet, of Chapter 4, Businesses Relating to Sales, of Title 3, Business and License Regulations, as follows:

TITLE 3 – BUSINESS AND LICENSE REGULATIONS
CHAPTER 4 – BUSINESSES RELATING TO SALES
ARTICLE H – PARKLET

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3-4H-2: PURPOSE:

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3-4H-1: DEFINITIONS:

A. Design Review: Materials used to define the perimeter of a parklet shall be subject to the approval of the Engineering Department. All other materials used in the construction of a parklet located in the downtown district shall be subject to the approval of the Main Street Waterloo Redevelopment Authority, in accordance with Section 2-2-3 of this Code.

B. Central Business District: The Central Business District shall include all properties in downtown Waterloo as described in Section 2-2-1 of this Code.

C. Establishment: A brick-and-mortar building located in the Central Business District selling food to customers and is required by the State of Iowa to hold a food establishment license, or a bar operating from a brick-and-mortar building in the Central Business District and is required by the State of Iowa to have a liquor license.

D. Operator: The owner and/or employees of the permitted business responsible for operating, maintaining, and serving customers of the parklet.

E. Parklet: The platform installed by a permittee over public parking spaces within the public right-of-way adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches and other accessory components and amenities may be placed. The term parklet, when permitted, also includes the ongoing obligation of maintenance, repair, operation and removal of the parklet improvements in accordance with the terms and conditions of this Article. Parklets shall be undertaken at the sole cost and expense of the permittee.

F. Permittee: Any individual, person, firm, corporation, partnership, or public entity and their agents and employees, which have been issued a permit under this A.

3-4H-2: PURPOSE:

This Article shall set forth regulations for any establishment operating a parklet in the Central Business District.

3-4H-3: RIGHT TO LIMIT:

The city council shall, by resolution, have the right to limit the number of parklets allowed on one side of one city block in the Central Business District. An establishment may apply for a parklet permit and a sidewalk cafe permit. The city reserves the right to limit or prohibit such combinations for the purpose of preserving public health and safety.

3-4H-4: PERMIT REQUIRED:

A. It shall be unlawful for any person to erect or operate a parklet within the city without first obtaining a permit from the city, and any other state or county permits, certifications, and licenses that may be required to operate an establishment on a parklet. A parklet, permitted and operated in accordance with this chapter shall not be considered an obstruction of a public right-of-way.

B. A permit for a parklet shall be issued only to the permittee who shall include, jointly and severally, (i) operator of the qualifying business and (ii) the fee simple owner of the real property upon which the qualifying business is located.

3-4H-5: WHERE AND WHEN PERMISSIBLE:

A parklet regulated under this Article shall be permitted as follows:

1. In the Central Business District on streets with speed limits of twenty-five (25) miles per hour or less.
2. Adjacent to the brick-and-mortar establishment.
3. Where the parklet's operation is primary to and a part of the operation of its adjacent establishment.
4. Parklets shall be sited along the curb line on streets where on-street parking spaces exist.
5. Parklets shall not block access to public utilities, hydrants, sidewalks, alleys or driveways.
6. The parklet shall extend no farther than ten (10) feet past the limit of the street frontage of the establishment. The parklet may extend past the street frontage of the establishment with approval from the city. When determining whether to grant approval, city shall weigh available parking, needs of neighboring businesses, and whether such approval is recommended by Main Street Design Review Board. Approval of extending the parklet past the street frontage of the establishment must be obtained annually and made at the time of filing the application.

3-4H-6: APPLICATION FOR PERMIT:

A. Contents of Application: Applicants for a permit under this Article shall complete and submit to the city clerk an application, fees, and supporting documentation, all of which shall include but not be limited to the following information:

1. The name, phone number, and email address of the applicant.
2. The name, address, phone number, and email address of the business.
3. Proof of valid food service license(s) from the state and/or county health departments if selling/handling food and/or beverages for human consumption.

4. Certificates of insurance and indemnification agreement as required in Section 3-4H-9 of this Article.

5. A drawing showing the layout and dimensions of the proposed parklet and adjacent property, including the structures to be located on the parklet, proposed location, size and number of tables, seating, umbrellas, location of entries, location of trees, parking meters, street signs, parking spaces utilized, vehicular travel lanes, sidewalk benches, trash receptacles, landscaping, utility boxes, fire hydrants, manholes, public utility valves or covers, storm sewer grates, poles, and other sidewalk obstruction either existing or proposed within twenty-five (25) feet of the parklet.

6. Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas, or other objects relating to the parklet.

7. A plan for the maintenance and cleaning of the parklet license area; the tables and chairs located within the parklet area; and the disposal of any trash or debris generated from the operation and use of the parklet by the general public and patrons of the permittee.

8. Any permits or approvals required from any other governmental agency necessary to operate the parklet.

9. A non-refundable application fee of fifty dollars (\$50.00).

B. Filing: No application shall be accepted for filing and processing unless it conforms to the requirements of this Article. This includes a complete and true application, all of the required materials and information prescribed, and the appropriate application fee. If an applicant submits a complete application for a sidewalk café and parklet to the city clerk, that conforms to the requirements of this section, the non-refundable application fee for such applications filed simultaneously shall be fifty dollars (\$50.00).

C. Filing – New Application: An establishment filing an application for the first time may do so at any time during the year. Fees for such applications and permits shall not be prorated. The city clerk may charge an applicant a twenty-dollar (\$20.00) fee for filing an incomplete application.

D. Filing – Renewal Applications and Timely Filing: A renewal application must be filed with the city clerk's office no later than February 1st of each year. The city reserves the right to reject any application not filed in a timely manner. The city clerk may charge an applicant a twenty-dollar (\$20.00) fee for filing an incomplete application or for failing to timely file the application.

E. Application Review: Upon receipt of the complete application as required by this Article, the city clerk shall forward the application to the Fire Department, Building Department, Planning, and Zoning Department, Engineering Department, and Police Department for review. If the applicant does not hold a liquor license, the police department is not required to review the application. Following approval by city departments, the city clerk shall forward the application to the Main Street Design Review Board for review and approval or denial.

F. Approval or denial of a parklet application shall be at the discretion of the city clerk. Such discretion shall be exercised with due regard to public health, safety, and welfare considerations. City departments may impose additional requirements in particular situations when it is deemed to be necessary to ensure compliance with city ordinances.

3-4H-7: ISSUANCE OF PERMIT:

A. If the city clerk finds the application is complete, fully executed, and made in conformance with Section 3-4H-6 of this Article, the application fee and all outstanding fees owed to the city are paid, and upon approval by all parties listed in Section 3-4H-6(E) of this Article, the city clerk shall inform the applicant that a permit may be issued subject to payment of a non-refundable permit fee of two hundred dollars (\$200.00). The fees listed in this section shall become effective on January 1, 2025.

B. Term of Permit: A permit shall be valid from April 1 through November 1.

C. Only responsible businesses will be allowed to renew. The city will determine if the business responsibly managed its parklet by the previous year's performance, calls for service, and compliance with city codes.

3-4H-8: TRANSFERABILITY OF PERMIT:

A permit issued under the provisions of this Article is not transferable in any situation to any person and is only applicable to the person filing the application.

3-4H-9: INSURANCE:

A. All permittees shall provide proof of and maintain current commercial general liability insurance having a minimum combined single limit of one million dollars (\$1,000,000.00). Workers' Compensation coverage of no less than the statutory requirement. A certificate of insurance shall be delivered to the city clerk prior to the issuance of a permit. The certificate of insurance shall list the City of Waterloo and its elected and appointed officials, officers, employees, and agents as named additional insureds on a primary and non-contributory basis, including a waiver of subrogation in favor of city, against any liabilities that may arise in connection with the operation of the parklet.

B. Apart from and separate from any insurance required under this section, the permittee shall agree in writing to indemnify, defend, and hold the City of Waterloo and its assignees and employees harmless from all losses, damages, injuries, claims, demands, and expenses in any manner resulting from or arising out of the permitted operation of the parklet.

C. Permittees holding a liquor license shall be required to provide proof of dram shop insurance covering the permitted parklet area.

3-4H-10: LITTER:

The permittee shall be responsible for keeping the parklet area free of trash or litter, and collecting and removing daily all garbage, litter, and other debris in its immediate vicinity.

3-4H-11: RESTRICTIONS ON SMOKING AND ALCOHOLIC BEVERAGES:

Operators shall enforce the following prohibitions or restrictions:

1. Smoking tobacco or using an electronic smoking device at a parklet may be permitted in accordance with the Iowa Smoke-Free Air Act.

2. Alcoholic beverages may be served at parklets pursuant to a valid liquor control license, and in accordance with state and local alcoholic beverage control laws, provided the following additional requirements are met:

a. Patron entrance to and egress from the parklet shall be controlled by operators of the establishment, who shall continuously monitor the parklet during times alcoholic beverages are being sold or consumed, and

b. No alcoholic beverages may be sold or served to patrons later than 12:00 a.m. No person shall consume alcoholic beverages on the parklet after 12:00 a.m.

c. No person shall be permitted to consume any alcoholic beverages within the parklet that were not purchased on the premises, and

d. Operators shall ensure that no person loiters in the clear path of pedestrian travel. Patrons may be in possession of an alcoholic beverage in the clear path of pedestrian travel only for the purpose of moving to the parklet from the adjoining indoor restaurant or vice versa.

3-4H-12: PARKLET REGULATIONS FOR OPERATION AND CONSTRUCTION:

A. City departments listed in Section 3-4H-6(E) shall have the authority to develop policies and standard requirements for parklet design and construction in addition to regulations listed in this Section, which shall be subject to approval by city council resolution.

B. The following regulations for operation and construction shall apply to all parklets:

1. **Date and Time of Operation:** A parklet may only operate from April 1 to November 1. Parklets shall not operate or allow patrons to congregate in the parklet between the hours of 12:00 a.m. and 6:00 a.m. daily. If a parklet is not in operation for the entire period, the annual permit fee shall not be prorated.
2. **Location:** All parklets may be located on a parking stall on public right-of-way in the Central Business district. Such an area shall be immediately adjacent to the establishment of which it is apart and, if the establishment also has a sidewalk café, provide (5) feet of public right-of-way available for pedestrian traffic. Parklets shall be adjacent to an establishment.
3. **Barrier:** Parklets shall have a three-sided barrier. This barrier shall provide an aesthetically pleasing separation from surrounding uses as determined by standards set out in this ordinance and by requirements established by the Main Street Design Review Board.
4. **Accessibility:** Parklets shall be accessible from the permitted premises to which it is attached. No tables or chairs will be permitted within ten (10) feet of a pedestrian crosswalk. There shall be a distance separation of no less than two (2) feet separating the structure of the parklet and the adjacent travel lane. No portion of any object placed within the parklet boundary shall extend into an adjacent pedestrian sidewalk, without first obtaining approval from the city.
5. **Occupancy:** A parklet shall not exceed one person per ten (10) square feet of floor area accessible to the public.
6. **Lighting:** A Parklet shall be adequately lit by use of non-obtrusive lighting, which shall not be directed toward any residential use, or the public street. Electrical extension cords shall be safely secured in a manner that mitigates tripping or other hazards.
7. **Amplified Sound Equipment:** Amplified sound equipment may be permitted in accordance with the city noise ordinance.
8. **Code Compliance:** Parklets shall comply with appropriate building, housing, and fire codes and with all other applicable federal, state, and city statutes. The parklet shall be constructed and installed to conform to all applicable federal, state, or county laws or regulations. The permittee shall have the continuing obligation of compliance with the Americans with Disabilities Act, as same may be amended from time to time.
9. **Inspections:** The city shall inspect parklets at least once per year outside of the application process at the same time inspection of the adjacent permitted establishment occurs. The city may, at its discretion, inspect a parklet at any other time as deemed necessary to ensure compliance with city ordinances.
10. **Perimeter Changes:** Any change to the perimeter of the parklet is subject to the approval of city departments listed in the application process and Main Street Design Review Board.
11. **Right-of-Way:** Permittee shall preserve and protect all existing trees and plantings in the public right-of-way within the immediate vicinity of the parklet. Permittee shall be required to replace or mitigate entirely at permittee's expense, any damage to the public right-of-way or private property as a result of the parklet construction, installation, placement, operation, maintenance or removal.
12. **Fire Prevention:** Awnings, umbrellas, and other decorative material accessory to the parklet shall be fire retardant, pressure treated or manufactured of fire resistive material.
13. **Maintenance:** Tables, chairs, umbrellas, and any objects accessory to the parklet shall be maintained in a clean and attractive appearance, shall be in good state of repair at all times and shall be maintained in accordance with the approved maintenance plan and shall keep the landscaping and plants in a good, healthy and vibrant condition.
14. **Litter and Debris:** The parklet shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all litter and debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan.

15. Accessory Items and Planters: Tables, seating, umbrellas and any other items accessory to the parklet shall be of a quality design and lasting materials, and workmanship both to ensure the safety and convenience of the users and to be compatible with the uses in the immediate vicinity of the parklet. If the parklet includes planters, the planters shall be placed within the parklet boundaries but shall be secured to ensure that they do not move onto the adjacent sidewalk. No planters with wheels are to be permitted.

16. Safety Requirements: The following safety measures shall be required for parklets:

a. A three-foot wheel stop or other appropriate "stops" such as planters shall be installed one (1) foot from the curb at the edge of the front and back of parking spaces. When parklets are installed on a portion of a parallel parking space, wheel stops or other appropriate "stops" such as planters should be set back four (4) feet from the parklet.

b. Traffic safety devices, including but not limited to flexible bollards may be required depending on existing conditions and site layout to properly protect the parklet and its patrons. Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the parklet platform.

c. Reflective elements are required at the outside corners of all parklets. Soft-hit posts are a standard solution deployed at the outside edges; however, the city shall consider and may require additional safety measures including flexible bollards, reflective elements or other solutions incorporated into the parklet design if warranted.

17. Fire Hydrant Clearance: Parklets shall not be permitted in front of a fire hydrant, over a manhole, public utility valve or cover. A clearance of three (3) feet in either direction of the hydrant along the length of the street shall separate parklets from fire hydrants.

18. Cost of Maintenance, Operation, and Compliance: The permittee shall, at its sole cost and expense, construct, operate, maintain, repair and remove the parklet and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the parklet to install, construct, operate, use, maintain, and repair in order to comply with health and sanitary requirements, fire hazard requirements, zoning requirements, building code requirements, city engineering standards, environmental requirements and other similar regulatory requirements. The city may require the permittee to provide additional services beneath the parklet platform, including but not limited to pest abatement service and clearing of catch basin grates to allow proper storm drainage. Such requirements shall be at the sole cost of the permittee.

3-4H-13: TAXES, ASSESSMENTS; OPERATING COSTS AND UTILITY CHARGES:

The permittee shall pay or cause to be paid all applicable real estate taxes, assessments, and other similar payments, usual or unusual, extraordinary as well as ordinary, which shall during the term be imposed upon, become due and payable, or become a lien upon the parklet or any part thereof, but specifically limited to such taxes or assessments which accrue after the effective date of the parklet permit. Permittee shall, upon request, exhibit a receipt for such payments to the City. Further, permittee shall pay or cause to be paid all operating expenses, such as those for light, electricity, charges for water, and all costs attributable to the maintenance and operation of all parklet improvements to be erected within the license area for the parklet or landscaping related thereto.

3-4H-14: APPEAL:

A person may appeal a decision of the city clerk to deny an application by filing a written appeal to the office of the city clerk within fourteen (14) days of the date of the decision. An administrative fee of fifty dollars (\$50.00) shall be paid at the time the appeal is filed. Failure to file the appeal and pay the administrative fee shall constitute a waiver of the right to a hearing, and the denial shall thereupon become final. If the written appeal and administrative fee are filed in conformance with this section, a hearing shall be scheduled and conducted pursuant to 3-4H-15(B).

3-4H-15: DENIAL, SUSPENSION, OR REVOCATION OF PERMIT:

A. Any permit issued under the provisions of this Article may be denied, suspended, or revoked by the city clerk as follows:

1. Violation of any provision of this Article, any other section of this Code, or has otherwise conducted business in an unlawful manner.
2. Fraud, misrepresentation, or false statements made in securing a permit and made in the course of the applicant's business.
3. Failure to cooperate with all reasonable requests of any official of the city.
4. A permittee or employee of a permittee selling any unwholesome or tainted food or food products.
5. Failure of any permittee to maintain the appropriate insurance, or county, state, and federal licenses and permits, during the term of the permit.
7. Failure to pay on time any fee owed to the city.
8. Being deemed a chronic nuisance property pursuant to Title 5, Chapter 5 of this Code.
9. Failing to pass an inspection or remedy inspection violations in a timely manner.

B. Upon receipt of information alleging grounds exist to deny, suspend, or revoke a parklet permit, or a written appeal and administrative fee have been received at the office of the city clerk, the city clerk shall cause a notice to be sent by ordinary mail to the applicant or permittee at the address noted in the application. Said notice shall state that a hearing has been set before the city council not more than thirty (30) days from the date of the notice. The notice shall include the reason and grounds for the hearing, the date and time of the hearing, and the place where the hearing will be conducted. Upon such hearing, if the city council determines that one or more of such grounds do exist, it may suspend or revoke an existing permit or uphold a decision to deny a permit. A suspension shall constitute a minimum period of fourteen (14) calendar days from the date of the hearing, during which period the permittee may not conduct any business. In the event such permit is revoked, no parklet permit shall be issued to the permittee for one (1) subsequent parklet season following the revocation.

C. A permittee shall, within five (5) calendar days from the date of revocation, remove the parklet. If the permittee files an appeal, such parklet may remain in operation through the appeal process. If the permittee loses the appeal, the permittee shall at its own expense, remove the parklet within five (5) calendar days of the date of the denial of the appeal.

D. In the event of revocation, the city clerk shall notify the Iowa Beer and Liquor Control Department. The permit holder may appeal the revocation to the Iowa Beer and Liquor Control Department Hearing Board, pursuant to Section 123.32, Code of Iowa. Revocation or suspension of authorization by the city of operation of a parklet shall not affect the licensing of the principal establishment unless separate action to suspend or revoke that license or permit is also initiated by the City Council.

3-4H-16: REMOVAL OF PARKLET:

The city reserves the right to require a parklet to temporarily suspend or cease operation or remove the parklet for an emergency or any other reason so that the city may access public right of way. The cost to remove and clean up a parklet shall be at the permittee's expense. In the event that city infrastructure causes damage to the parklet, the city shall not be liable for such damage. Parklets shall be removed within five (5) business days of the expiration of the permit. If the permittee fails to remove the parklet when directed by the city or within fourteen (14) days after the expiration of the permit, the city may remove the parklet and the cost thereof shall be assessed against the adjacent property.

3-4H-17: PENALTY:

Any person who violates any of the provisions of this Article shall be guilty of a municipal infraction and fined as provided in subsection 1-3-2 of this Code.

3-4H-18: SEVERABILITY:

If any provision or clause of this Article or its application to any person or in any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Article,

which can be given effect without the invalid provision, or application, and to this end, the provisions of this Article shall be severable.

INTRODUCED:	January 16, 2024
PASSED 1st CONSIDERATION:	January 16, 2024
PASSED 2 nd CONSIDERATION:	January 16, 2024
PASSED 3 rd CONSIDERATION:	January 16, 2024

PASSED AND ADOPTED this 16th day of January 2024.

Quentin Hart
Quentin Hart, Mayor



ATTEST:

Kelley Felchle
Kelley Felchle, City Clerk



SEAL

