

ORDINANCE C-14-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING THE CITY OF FORT LAUDERDALE CODE OF ORDINANCES, CHAPTER 25, CREATING A NEW ARTICLE VII-A, "PARKLETS"; CREATING A NEW SECTION 25A-181, "INTENT AND PURPOSE"; CREATING A NEW SECTION 25A-182, "PERMIT REQUIRED"; CREATING A NEW SECTION 25A-183, "DEFINITIONS"; CREATING A NEW SECTION 25A-184, "PERMIT REQUIREMENTS AND ASSOCIATED FEES"; CREATING A NEW SECTION 25A-185, "PERMIT APPLICATION AND SITE PLAN APPROVAL"; CREATING A NEW SECTION 25A-186, "CONSTRUCTION OF PARKLET IMPROVEMENTS"; CREATING A NEW SECTION 25A-187, "PARKLET OPERATION AND CONDITIONS"; CREATING A NEW SECTION 25A-188, "TAXES, ASSESSMENTS; OPERATING COSTS AND UTILITY CHARGES"; CREATING A NEW SECTION 25A-189, "INDEMNITY AND INSURANCE REQUIREMENTS; CREATING A NEW SECTION 25A-190, "DENIAL; REVOCATION OR SUSPENSION OF PERMIT;" CREATING A NEW SECTION 25A-191, "APPEALS"; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICT ORDINANCE PROVISION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, "Parklets" are platforms installed adjacent to public sidewalks over parking spaces with a public right-of-way; and

WHEREAS, "Parklets" are semi-permanent decks and expand the pedestrian experience and hence the quality thereof beyond the sidewalk; and

WHEREAS, development of a program of "Parklets" will allow adjacent business owners to provide outdoor seating, without the need for permanent street re-design; and

WHEREAS, "Parklets," which are open to the general public because they are located in a public right-of-way, may include tables, chairs, umbrellas, landscaping, food and beverage service and sun shade, all of which enhance the quality of the pedestrian experience; and

WHEREAS, "Parklets" have been successfully implemented in other cities, including San Francisco, Oakland, Brooklyn, Philadelphia, Los Angeles, Sand Jose, Birmingham, Miami; and

WHEREAS, by Resolution No. 13-139, the City Commission of the City of Fort Lauderdale adopted a "pilot program" for "Parklets"; and

WHEREAS it has been recommended by City staff that the "pilot program" was operated successfully and recommends that an Ordinance be adopted to permanently establish a program for the establishment and administration of "Parklets;" and

WHEREAS, the City Commission has determined that establishment of a program and conditions for Parklets serves a valid municipal purpose.

BE IT ORDAINED BY THE CITY COMMISSIO OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That this Ordinance amends Chapter 25, "Streets and Sidewalks" of the Code of Ordinances of the City of Fort Lauderdale (hereinafter, "Code") by creating a new Article VII – A, "Parklets," and a new Section 25A-181, "Intent and Purpose."

Sec. 25A-181. Intent and Purpose.

The establishment of a program for the siting, installation, construction, operation, use, maintenance and repair of Parklets is designed and intended to facilitate the conversion of inactive and often underutilized on-street parking spaces into publicly-accessible open space available for the general public to enjoy within a system of conditions. Parklets are open to the general public because they are located within a public right-of-way, and may include tables, seating, umbrellas, landscaping, food and beverage service and sun shade, all of which are intended to enhance the quality of the pedestrian experience. The program for Parklets is designed to provide a path for merchants to take individual action in the development and beautification of the City's public realm and are further intended as an aesthetic enhancement to the streetscape, providing an economical solution to the need for increased public open space and encouraging of walking by providing amenities like seating, planting, bike parking, and art.

SECTION 2. That Chapter 25, "Streets and Sidewalks," Article VII – A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-182, "Permit Required," to read as follows:

Sec. 25A-182 Permit Required.

Operating a Parklet within the public rights-of-way of the City without a permit from the Department and a Parklet Revocable License executed by the Permittee and City, and paying the appropriate fees, costs and charges relating thereto in accordance with the provisions of this Article VII-A is prohibited. A Parklet, permitted and operated in accordance with this Article VII-A, "Parklets" shall not be an obstruction of a public right-of-way in violation of Chapter 25, "Streets and Sidewalk."

SECTION 3. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-183, "Definitions," to read as follows:

Sec. 25A-183 Definitions.

As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated:

Applicant means the persons who have applied for approval of a Parklet Site Plan. The Applicant shall include, jointly and severally, both (i) the owner or operator of the Qualifying Business and (ii) the fee simple owner of the real property upon which the Qualifying Business is situated. After approval of the permit for the Parklet and the Parklet Site Plan by the Department and execution of a Parklet Revocable License authorizing the design, construction, installation, use, maintenance and removal of the Parklet, the Applicant shall be known as the Permittee.

City means the City of Fort Lauderdale, a municipal corporation organized and existing under the laws of Florida.

City Manager means the City's Chief Executive Officer, its City Manager, or his or her designee.

Contract Administrator means the Director, or his or her designee who will be responsible for the administration of the Parklet Revocable License that Permittee shall be required to execute as a condition precedent to the design, construction, installation, operation, maintenance and removal of a Parklet.

Department means the City's Department of Sustainable Development, which is charged with responsibility of administering the approval, establishment, design, construction, installation, operation, maintenance and removal of a Parklet.

Director means the Director of the Department, or his or her designee

Parklet License Area means the area described in the approved Parklet Site Plan, such License Area being within a public right-of-way, including the air space with which the Parklet Improvements identified in the Parklet Revocable License shall be constructed and within which the Parklet will be operated and maintained for the purpose of accommodating the general public and the patrons of Permittee's adjacent business.

Parklet Site Plan or *Site Plan* means the site plan prepared by the Applicant and approved by the City and incorporated into the Parklet Revocable License that authorizes the design, construction, installation, operation and maintenance of the Parklet. Approval of the Site Plan does not relieve Permittee of proceeding with all other governmental approvals otherwise applicable to the construction, installation, use, operation and maintenance of the Parklet, including building permits under the Florida Building Code and Engineering Permits under the City's regulations. A copy of the approved Parklet Site Plan shall be attached to the Parklet Revocable License authorizing the Parklet and shall be filed with the Department.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

Parklet Improvements means the improvements identified on the approved Parklet Site Plan, which such improvements may, but shall not necessarily include Parklet platform, tables, chairs, umbrellas, and other accessory equipment to the Project, railings, seating, landscape or streetscape elements, soft-hit poles, wheel stops, etc.

Parklet means the platform installed by a Permittee over parking spaces adjacent to a sidewalk area upon which tables, chairs, umbrellas, landscaping, benches and other accessory components may be placed to create an enhanced pedestrian experience for the general public and patrons of the Permittee's adjacent business, providing an area within which the pedestrian experience along the public right-of-way may be amplified and enhanced by offering an area with which one might sit, rest, recreate or indulge in open air dining and beverage experience. 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 Article VII-A, "Parklets" and the Parklet Revocable License, all of which must be undertaken at the sole cost and expense of the Permittee. The Parklet shall be located no farther than 150 feet from any portion of the Qualifying Business.

Parklet Revocable License means the instrument that the Permittee and City must execute after approval of the Parklet location and Parklet Site Plan. The Parklet Revocable License shall outline the terms and conditions required for the implementation of the construction, installation, use, operation, maintenance and removal of the Parklet after approval by the Department.

Permit(s) means permits issued under the Florida Building Code, CITY Engineering Permits, and includes permits issued by any other governmental authority having subject matter jurisdiction over the relevant component of the Project.

Permittee means, jointly and severally, (i) the owner or operator of the Qualifying Business, and (ii) the fee simple owner of the real property upon which the Qualifying Business is situated.

Qualifying Business means the business located no farther than 150 feet from the Parklet where the owner or operator of the Qualifying Business is one of the two Applicants for the permit to construct, install, operate, use, maintain, repair and remove the Parklet.

U.L.D.R. means the CITY's Unified Land Development Regulations.

SECTION 4. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-184, "Permit Requirements and Associated Fees," to read as follows:

Sec. 25A-184. Permit Requirements and Associated Fees.

(a) 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.

(b) The application fee and annual permit fee for establishing, operating and maintaining a Parklet shall be determined by the City Commission and set forth in a Resolution.

(c) To compensate the City for the loss of parking revenues, the Permittee shall pay an annual fee of \$650.00, in advance, per parking space that is taken out of service. The City Commission may revise the annual fee for loss of parking revenues from time to time by adoption of a Resolution.

SECTION 5. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-185, "Permit Application and Site Plan Approval," to read as follows:

Sec. 25A-185. Permit Application and Site Plan Approval.

(a) The Application for a Permit to construct, operate, use, maintain and repair a Parklet shall be made at the Department of Sustainable Development on a form provided by the Department. The Application shall include, but not be limited to the following information:

- (1) Name, postal address, e-mail address and phone number(s) of the Applicant; and
- (2) The Application shall be executed by (i) the owner or operator of the Qualifying Business and (ii) the fee simple owner of the real property upon which the Qualifying Business is situated; and
- (3) A copy of a current business tax receipt for the Qualifying Business; and
- (4) A copy of the valid certificate of occupancy for the Qualifying Business; and
- (5) A copy of the currently liability insurance for the Applicant and fee simple owner of property underlying the Qualifying Business; and.
- (6) A drawing (minimum scale of one (1) inch equals twenty (20) feet) showing the layout and dimensions of the proposed Parklet License Area and Parklet and adjacent property referenced in subsection (a) (2) above, including the structures and improvements to be located on the Parklet, proposed location, size and number of tables, seating, umbrellas, location of entries, location of trees, parking meters, vehicular travel lanes, bus shelters, sidewalk benches, trash receptacles, landscaping, utility boxes, pole, guidelines and other sidewalk obstruction either existing or proposed within seventy-five (75) feet of the License Area for the Parklet; and
- (7) Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the Parklet Improvements; and
- (8) A plan for the maintenance and cleaning of the Parklet License Area; the tables and chairs located within the Parklet Area; any trash or food on or about the tables and chairs or sidewalk adjacent to the Parklet

- Improvements; 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; and
- (9) Any permits or approvals required from any other governmental agency necessary to operate the Parklet; and
 - (10) Applications shall be accompanied by a non-refundable Application fee which shall be credited to the first year permit fee, should the application be approved.
 - (11) No tables or chairs will be permitted within five (5) feet of a pedestrian crosswalk. There must be a distance separation of no less than eighteen (18") inches separating the structure of the Parklet and the adjacent travel lane.
 - (12) The serving and consumption of alcoholic beverages as part of the Parklet's services shall be permitted only if it is in compliance with applicable regulations of governmental agencies.
 - (13) As a condition precedent to any approval granted for a Parklet, a Parklet Revocable License shall be executed by both the Permittee and the City.
 - a. By adoption of this Ordinance, the City Commission hereby delegates to the City Manager the authority to execute the Parklet Revocable License on behalf of the City.
 - (14) Eligible locations for Parklets shall be limited to:
 - a. Locations on streets with speed limits of 25 MPH or less and on Oakland Park and Commercial Boulevards between US 1 and the Intracoastal Waterway;
 - b. Parklets shall be sited along the curb line on streets where on-street parking spaces exist. The Parklet can be considered on any location where there are, or would be, space(s) for on-street parallel, angled, or perpendicular parking, including spaces with metered or unmetered parking; and
 - c. Parklets are generally permitted on streets with a running slope (grade) of five (5%) percent or less. When installed on streets with running slopes of three (3%) percent or greater, Parklets will be required to include a wheelchair rest area. Parklets may be permitted on streets with a running slope of five (5%) percent or greater only if they can provide safe access and turnaround area for wheelchair users; and
 - d. Locations within zoning districts B-1 (Boulevard Business), CB (Community Business), RAC-CC (Regional Activity Center – City Center) and RAC-UV (Regional Activity Center – Urban Village).
 - (15) 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 Department will consider additional safety measures including bollards, reflective elements or other solutions incorporated into the Parklet design if warranted.

- (16) For Parklets in parallel parking spaces, a three-foot wheel stop or other appropriate “stops” such as planters must be installed one (1) foot from the curb at the edge of the front and back parking spaces. When Parklets are installed adjacent to parallel parking spaces, wheel stops or other appropriate “stops” such as planters should be set back four (4) feet from the Parklet Improvements. For angled parking spaces adjacent to driveways, appropriate locations for wheel stops will be determined by the Department. Wheel stops should be made of recycled rubber. Concrete wheel stops are discouraged.
- (17) Parklets must not interfere with sight triangles regulated by the City’s ULDR, ULDR §74-2.2.Q.1 and ULDR § 47-35, Definitions, site triangle.
- (18) If the Parklet is located in an area with metered parking, the locations of the parking meters to be taken out of service must be shown, including their associated parking meter number(s). The number can be found on each parking meter.
- (19) A maximum number of fifteen (15) Parklets may be approved pursuant to these regulations.
- (20) The Applicant shall comply with the registration of facilities in accordance with Code Sec. 25-99.
- (21) Traffic safety devices, including but not limited to bollards may be required depending on existing conditions and site layout to properly protect the Parklet and its patrons. Safety devices shall be submitted for approval to the Urban Design Engineer.

(b) The Department shall review the materials in in subparagraph (a) above and grant approval, approval with conditions or denial of the application for a Parklet. Approval of the Parklet Site Plan under this section shall not relieve the Permittee of the obligation of securing all required governmental permits necessary for construction of the Parklet Improvements, to the extent required, which such permits may include, but are not necessarily limited to a building permit under the Florida Building Code and Broward County Amendments thereto and engineering permits under the City’s regulation. A copy of the approved Parklet Site Plan shall be placed and remain on file with the Department.

(c) At all times the permit the approved Parklet, Parklet Site Plan and Parklet Revocable License shall be subordinate and inferior to the City’s superior interest in maintaining the public right-of-way underlying the Parklet. In the event that any conflicts should ever arise between the City’s superior interest as aforesaid and the operation, use, maintenance and

repair of the Parklet, then, in that event, the rights of the City's use and obligation of maintaining the public right-of-way for its superior intended purpose shall prevail over that of the Permittee and the Permittee shall not be entitled to any compensation for interference with the operation and use of the Parklet. The Permitted shall gain no property right or contract right to the continued operation and use of the Parklet.

(d) In the event the Permittee desires to make modifications to the Parklet Site Plan or Parklet Improvements after initial approval is granted under subsection (b) above, such proposed modifications shall be submitted to the Department for review and approval following the processes set forth above. Approval of such modification shall be granted, granted with conditions or denied by the Department.

SECTION 6. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-186, "Construction of Parklet Improvements," to read as follows:

Sec. 25A-186 Construction of Parklet Improvements

(a) The Parklet License Area shall be used as the site for the construction, maintenance and repair of the Parklet Improvements and the use and operation of the Parklet and shall be used for no other purpose whatsoever, unless otherwise approved by the Department. The Permittee shall construct the Parklet in accordance with the following terms and conditions:

(1) The Permittee shall prepare construction plans and specifications based on the Parklet Site Plan approved by the Department in accordance with the provisions set forth in Section 25A-185 above. The construction plans and specifications shall be in accordance with the City's Engineering Standards and shall be submitted to the Department's Urban Design Engineer for approval prior to submission of same to the appropriate government officials for issuance of applicable permits in accordance with applicable governmental regulations, including, but not limited to the Florida Building Code, applicable Unified Land Development Regulations, applicable City Codes, and City Engineering regulations.

(2) After approval by the Department's Urban Design Engineer, the construction plans and specifications shall be submitted by the Permittee to the appropriate governmental officials for review and issuance of all applicable building and engineering permits in accordance with the laws, regulations and rules of all governmental entities with jurisdiction over the construction of the Project improvements. A copy of the

approved plans and specifications shall be placed and remain on file with the Department.

(3) The Permittee shall obtain all applicable building permits, engineering permits and approvals for the construction and installation of the Parklet and commence construction upon issuance of such permits. Such construction shall be completed within ninety (90) days of issuance of such permits.

(4) The Permittee shall be responsible for all costs and fees associated with the planning, permitting and construction of the Project. The Permittee agrees that the location and finish grades of the improvements shown on the Parklet Site Plan will be indicated on the site and approved by the Department prior to commencement of construction. Permittee shall provide a construction bond in accordance with Code Sec. 25-112 prior to commencement of any construction or installation of the Parklet.

(5) The Permittee is obligated to replace any and all landscaping and public improvements that are damaged as a result of the construction and installation of the Parklet Improvements utilizing the same quality of materials and workmanship as approved by the Departments Urban Design Engineer.

(b) The Permittee shall provide “as-built” plans to the Department’s Urban Design Engineer certifying the location of all components of the Parklet Improvements. In the event any of the components of the Parklet Improvements are constructed in whole or in part outside the Parklet License Area or not in compliance with the approved Parklet Site Plan, the Permittee shall be required to remove those offending components and relocate same within the License Area for the Parklet in accordance with the approved Parklet Site Plan. After initial completion of construction, the Permittee shall be under a continuing obligation to supply “as-built” plans to the Department’s Urban Design Engineer as to any alterations, modifications or renovations of the Parklet Improvements within the Parklet License Area.

SECTION 7. That Chapter 25, “Streets and Sidewalks,” Article VII-A, “Parklets” of the City of Fort Lauderdale’s Code of Ordinances is amended to create a new Section 25A-187, “Parklet Operations and Conditions,” to read as follows:

Sec. 25A-187. Parklet Operation and Conditions.

(a) The Parklet shall be operated for the purpose of accommodating the public in general without charge and the patrons of the Permittee and may include providing open air dining and beverage service opportunities, provided, however, that nothing herein shall be

construed as prohibiting the Permittee from charging for the sale or service of food or beverage within the Parklet License Area for sales from the Qualifying Business. The Parklet shall be available to the public at large and not designated primarily for patrons of the Permittee.

(b) 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.

(c) General landscape maintenance attendant to the Parklet should be performed on a regular basis at the Permittee's sole cost and expense.

(d) Awnings, umbrellas and other decorative material accessory to the Parklet shall be fire retardant, pressure treated or manufactured of fire resistive material.

(e) 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.

(f) The Parklet shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day in compliance with the approved maintenance plan

(g) 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.

(h) No portion of any object placed within the Parklet boundary shall extend into the adjacent pedestrian sidewalk.

(i) If the Parklet includes planters, the planters must be placed within the Parklet boundaries but must be secured to ensure that they do not move onto the adjacent un-level sidewalk. No planters with wheels are to be permitted.

(j) 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.

(k) The serving and consumption of alcoholic beverages as part of the operation of the Project shall be permitted subject to regulations of governmental entities having jurisdiction over such activities.

(l) No advertising signs or business identification signs shall be permitted within the Parklet License Area.

(m) No table or chair nor any other part of the Parklet may be attached, chained, or in any manner affixed to any tree, post or other fixture within the Parklet License Area.

(n) If found necessary for the protection of health, safety and welfare of the public, the City Manager or his designee may require the Permittee to immediately remove or relocate all parts of the tables, chairs, umbrellas and equipment within the Parklet License Area. If the Permittee fails to remove or relocate the tables, chairs and umbrellas as requested within a reasonable time as determined by the City Manager, given the circumstances at hand, the City may remove or relocate same in emergency situations and the cost thereof shall be borne by the Permittee.

(o) The Permittee is responsible for the costs associated with removal of the Parklet platform and accessories.

(p) The City and its officers and employees shall not be responsible for Parklet or Parklet components relocated during emergencies

(q) Amplified or non-amplified music may be permitted within the Parklet Area, upon recommendation of the Department and subject to the approval of the City Manager, or his designee, as to the hours at which the music may be played, the volume settings, placement of speakers and any other facet of the projection of the music.

(r) The Permittee shall, at its sole cost and expense, remove the tables, chairs and umbrellas from the Parklet Area at the close of Permittee's Qualifying Business each day, provided the tables, chairs and umbrellas are set back in the Parklet License Area by the opening of business (no later than 11:00 A.M.) the following day, except for inclement weather.

(s) Parklets shall not be permitted in front of a fire hydrant, over a manhole, public utility valve or cover. A clearance of fifteen (15) feet shall separate Parklets from fire hydrants.

(t) Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the Parklet platform.

(u) The Parklet shall be constructed and installed to conform to all applicable codes, rules and regulations including the Florida Building Code, City of Fort Lauderdale's Unified Land Development Regulations, City's Engineering Standards, Americans with Disabilities Act ("ADA") and other applicable federal, state or county laws or regulations.

(v) No Parklet shall be designed or installed in such a manner as to result in a violation of the City's ULDR with regard to sight triangles. ULDR Sec. 47-2.2, Measurements and ULDR 47-35.1, Definitions ("sight distance" and "sight triangle").

(w) There shall be a minimum of five (5) feet wide clear path between the Parklet and the abutting sidewalks for pedestrians at all times.

(x) The Permittee shall keep on record with the Department at all times, information on a contact person to be contacting during emergencies, such information on the contact person to include (i) name, (ii) mailing, (iii) e-mail address, (iv) telephone number both at work and residential.

(y) The Permittee shall have the continuing obligation of compliance with the Americans With Disabilities Act, as same may be amended from time to time.

(z) The Permittee shall, at its sole cost and expense, construct, operate, maintain and repair the Parklet and Parklet Improvements and perform such acts and do such things as shall be lawfully required by any public body having jurisdiction over the Parklet, Parklet Improvements and Parklet License Area will be installed, constructed, operated, used, maintained and repaired 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.

(aa) Approval for the Parklet will not go into effect until the City and the Permittee have executed the Parklet Revocable License. The Parklet Revocable License template, in substantial form, is part of the application on file with the Department.

SECTION 8. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-188, "Taxes, Assessments; Operating Costs and Utility Charges," to read as follows:

Sec. 25A-188. Taxes, Assessments; Operating Costs and Utility Charges.

(a) 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 Parklet License Area or any part thereof, but specifically limited to such taxes or assessments which accrue after the Effective Date of the Parklet Revocable License, by virtue of any present or any future law of the United States of America or of the State of Florida or of any county or municipal authority. Permittee shall, upon request, exhibit a receipt for such payments to the CITY annually. Further, subject to subparagraph (b) below, as of the Effective Date of the Parklet Revocable License, 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.

(b) Permittee shall have the right to review, by legal proceedings, any taxes, assessments or other charges imposed upon Permittee relating to the Parklet. If any such taxes, assessments or other charges shall be reduced, canceled, set aside or to any extent discharged, the Permittee shall pay the amount that shall be finally assessed or imposed against the License Area for the Parklet or adjudicated to be due and payable on any disputed or contested items.

(c) If, as a result of any legal proceedings pursuant to the provisions of subparagraph (b) hereof, there is any reduction, cancellation, setting aside or discharge of any tax or assessment, the refund shall be payable to Permittee, and if such refund be made to the City, then and in that event the City shall regard such refund as held in trust for the benefit of Permittee and shall immediately pay over the same to the Permittee. The term "legal proceedings" as used in this subparagraph shall be construed to include appropriate appeals from any judgments, decrees or orders, or certiorari proceedings.

(d) The Permittee shall be responsible for securing separate meters or billing for all utilities consumed within the Parklet License Area. Permittee shall promptly pay when due all operating, construction, maintenance and servicing charges, expenses and costs, including telephone, gas, electricity, cable, telecommunications, water, and all other expenses incurred in the use and operation of the Parklet. The accrual of utilities and operating costs under this subparagraph prior to termination of the Parklet Revocable License shall survive the termination of the Parklet Revocable License and remain the obligation of the Permittee.

SECTION 9. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-189, "Indemnity and Insurance Requirements," to read as follows:

Sec. 25A-189. Indemnity and Insurance Requirements.

(a) By execution of the Parklet Revocable License as a condition precedent to the installation, construction, use, operation, maintenance and repair of a Parklet, the Permittee shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of Permittee under the Parklet Revocable License, conditions contained therein, the location, construction, repair, maintenance use or occupancy by Permittee of the Parklet License Area, or the breach or default by Permittee of any condition proscribed by this Chapter or covenants or provisions of the Parklet Revocable License, except for any occurrence arising out of or resulting from the intentional torts or gross negligence of the City, its officers, agents and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the Parklet License Area by Permittee, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by Permittee, or any actual or alleged violation by Permittee of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court or competent jurisdiction included in the indemnity.

(b) By execution of the Parklet Revocable License, the Permittee, upon proper and timely notice, shall investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the City, Permittee shall assume and defend not only itself but also the City in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the City, provided that the City (exercisable by the City's Risk Manager) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of the Parklet Revocable License and shall cover any acts or omissions occurring during the term of the Parklet Revocable License, including any period after termination, revocation or expiration of the Parklet Revocable License while any curative acts are undertaken.

(c) At all times while the Parklet Revocable License is in effect, the Permittee, at its expense, shall keep or cause to be kept in effect the following:

- (1) Commercial General Liability

- (i) Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Each Occurrence \$1,000,000.00
 - General Aggregate Limit \$2,000,000.00
 - Products/Completed Operations \$1,000,000.00
 - Personal and Advertising Injury \$1,000,000.00
- (ii) Endorsements Required
 - City of Fort Lauderdale listed as additional insured
 - Waiver of Subrogation
 - Contingent & Contractual Liability
 - Premises & Operations Liability

(2) Business Automobile Liability

- (i) Limits of Liability
 - Bodily Injury and Property Damage
 - \$1,000,000.00 Combined Single Limit, per Occurrence
 - Including Hired, Borrowed or Non-Owned Autos
- (ii) Workers' Compensation
 - Limits of liability
 - Statutory – State of Florida
 - Waiver of Subrogation

Employer's Liability

- (i) Limits of Liability
 - \$100,000.00 for bodily injury cause by an accident, each accident
 - \$100,000.00 for bodily injury caused by disease, each employee
 - \$500,000 for bodily injury caused by disease, policy limit

(d) The Permittee shall deliver to City's Risk Manager duplicate copies of all insurance policies required hereunder and proof of full payment thereof on or before the Effective Date of the Parklet Revocable License. From time to time, the Permittee shall procure and pay for renewals of insurance required herein before it expires. The Permittee shall deliver to the

Department the renewal policy at least twenty (20) days before the existing policy expires. All of the policies of insurances provided for hereunder:

- (i) shall be in the form and substance approved by the Department of Financial Services State of Florida (“DOFS”);
- (ii) shall be issued only by companies authorized to conduct business by DOFS;
- (iii) shall be with a carrier having an AM Best's Rating of not less than A-, Class VII;
- (iv) shall provide that they may not be canceled by the insurer for ten (10) days after service of notice of the proposed cancellation upon CITY and shall not be invalidated as to the interest of City by any act, omission or neglect of Permittee.

(e) In any case where the original policy of any such insurance shall be delivered to the Permittee, a duplicate original of such policy shall thereupon be delivered to the Department. All insurance policies shall be renewed by Permittee and certificates evidencing such renewals, bearing endorsements or accompanied by other evidence of the receipt by the respective insurance companies of the premiums thereon, shall be delivered to the Department, at least twenty (20) days prior to their respective expiration dates.

(f) If the Permittee fails to obtain and maintain insurance as required herein and such failure shall continue for a period of fifteen (15) days after notice by the Department, the City may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor, with the ultimate cost and expense thereof to be the responsibility of Permittee.

(g) The obligation of collection upon the insurance policies furnished and provided for by the Permittee, or obtained by the City by reasons of the failure of the Permittee to obtain them, shall be upon the Permittee, but the City shall cooperate in such collection (but without expense to the City in such reasonable degree as may be requested by the Permittee.

(h) The City does not in any way represent that the types and amounts of insurance required hereunder are sufficient or adequate to protect the Permittee's or Contractor's interests or liabilities but are merely minimum requirements established by the City's Risk Management Division. The City reserves the right to require any other insurance coverage's that City deems necessary depending upon the risk of loss and exposure to liability.

SECTION 10. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-190, "Denial; Revocation or Suspension of Permit," to read as follows:

Sec. 25A-190 Denial; Revocation or Suspension of Permit

(a) The Department Director may deny, revoke or suspend a permit for a Parklet if it is found by the Director that:

- (1) Any required business or health permit has been suspended, revoked or cancelled;
- (2) The Permittee does not have the insurance which is correct and effective in the minimum amounts described in Section 25A-189.
- (3) Violation of any of the conditions set forth in Section 24A-187, Parklet Operation and Conditions.
- (4) The Permittee has failed to correct violations of this Article or conditions of the permit within three (3) days of receipt of the Director's notice of same delivered in writing to the Permitted by registered mail, return receipt requested to the last address provided by the Permittee to the City; or
- (5) Tables, chairs, umbrellas and other vestiges of the Parklet may be removed by the Department and a reasonable fee charged for labor, transportation and storage should the Permittee fail to remove said items within thirty-six (36) hours of receipt of the Director's final notice to do so for any reason provided for under this Article.

(b) The permit for a Parklet may be suspended under the following conditions:

- (1) In the event that the Parklet Revocable License granted herein shall (a) ever conflict with a superior municipal interest of the City or public, or (b) at any time the CITY requires the use of the Parklet License Area for a superior conflicting municipal purpose or (c) determines that continuation of the Parklet Revocable License granted herein is no longer in the best public interest, all as determined by the City Commission after at least fifteen (15) advance notice to Permittee that the matter will be considered by the City Commission, then, in that event, the permit and Parklet Revocable License granted herein for the respective Parklet License Area shall be terminable, in whole or in part, at the will of the City Commission.

- (2) In the event Permittee is in violation of any material term or condition of this Parklet Revocable License, as reasonably determined by the City Manager, or the permit granted herein or the actions of Permittee or any of its agents, servants, employees, guests or invitees or the agents servants, employees, or any of Permittee's contractors, subcontractors or independent contractors conflict with a superior municipal interest of the City or the public, or at any time the City requires the use of the Parklet License Area or adjacent publicly dedicated thoroughfare(s) for a superior conflicting municipal purpose, or continuation of the Parklet Revocable License or permit granted herein as to the Parklet License Area is no longer in the best public interests, all as reasonably determined by the City Manager, then, upon advance written notice to Permittee of not less than seventy-two (72) hours where Permitted is given an opportunity to be heard on the matters by the City Manager, the authority granted by the Parklet Revocable License or permit may be temporarily suspended by the City Manager for a period not exceeding fourteen (14) days.
- (3) In the event that emergent conditions arise within the Parklet License Area that present an imminent threat to the health, safety or welfare of Persons or property, the City Manager may temporarily suspend this Parklet Revocable License, in whole or in part, for a period not to exceed fourteen (14) days. In such a circumstance notice shall be provided to Permitted pursuant to the provisions of Section 13, Emergencies, of the Parklet Revocable License. In the event the condition persists for a period of seven (7) days, then this Revocable License may be temporarily suspended for a period in excess of fourteen (14) days by action of the City Commission.

(c) Upon denial or revocation, the Director shall give notice of such action to the Permittee in writing stating the action which has been taken and the reasons therefor. If the action of the Director is based on subparagraph (a) (2) or (a) (3) or subparagraphs (b) (1), (b) (2) or (b) (3) above, the action shall be effective twenty-four (24) hours after the date of mailing of the notice to Permitted. Otherwise such notice becomes effective within ten (10) days after the date of mailing of the notice to the Permitted.

SECTION 11. That Chapter 25, "Streets and Sidewalks," Article VII-A, "Parklets" of the City of Fort Lauderdale's Code of Ordinances is amended to create a new Section 25A-191, "Appeals," to read as follows:

Sec. 25A-191. Appeals.

(a) Appeal shall be initiated within ten (10) days of the effective date of the denial or revocation of the Parklet Permit by filing a written notice of appeal with the City Manger.

(b) The City Manager shall place the appeal on the next available regularly scheduled City Commission agenda. At the hearing upon appeal, the City Commission shall hear and determine the appeal, and the decision of the City Commission shall be final and binding and effective immediately.

(c) The filing of a notice of appeal by a Permitted shall not stay an order by the Director to remove a Parklet or parts thereof. Vestiges of the Parklet, such as tables, chairs, umbrellas and things of a like nature shall be removed immediately as set out in this Article pending disposition of the appeal and final decision of the City Commission.

SECTION 12. If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 13. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 14. That this Ordinance shall be in full force and effect upon final passage.

PASSED FIRST READING this __ day of _____, 20__.
PASSED SECOND READING this __ day of _____, 20__.

John P. "Jack" Seiler, Mayor

ATTEST:

Jonda K. Joseph, City Clerk

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