

## Chapter 142

### PARKLETS

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**142.01 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.

**142.02 PERMIT REQUIRED.** Operating a parklet within the public rights-of-way of the city without a permit 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 chapter is prohibited. A parklet, permitted and operated in accordance with this chapter shall not be considered an obstruction of a public right-of-way.

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

1. "Applicant" means a person or entity that has 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 City 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".

2. “Leasing Applicant” means any person or entity that has applied to lease a City-owned parklet as set forth in Windsor Heights Code Section 142.13. 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 parklet lease by the City and execution of a Parklet Use Agreement, the applicant shall be known as the “lessee”.
3. “Lessee” 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, whom the City has approved to lease a City-owned parklet and have executed a Parklet Use Agreement.
4. “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 this chapter. "Parklets" and the parklet revocable license must be undertaken at the sole cost and expense of the permittee. The parklet shall be located no farther than one hundred fifty (150) feet from any portion of the qualifying business.
5. “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.
6. “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.
7. “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.
8. “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 City's 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 City.

9. "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, whom have been approved for a parklet permit and parklet site plan, and have received a parklet revocable license authorizing the design, construction, installation, use, maintenance and removal of a parklet.
10. "Qualifying business" means the business located no farther than one hundred fifty (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.

**142.04 PERMIT REQUIREMENTS AND ASSOCIATED FEES.** The following are permit requirements and associated fees needed to obtain a parklet permit:

1. 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.
2. The application fee and annual permit fee for establishing, operating and maintaining a parklet shall be determined by the City Council and set forth in a resolution.

**142.05 PERMIT APPLICATION AND SITE PLAN APPROVAL.**

1. The application for a permit to construct, operate, use, maintain and repair a parklet shall be submitted to the City's planning and zoning department on a form provided by the department. The application shall include, but not be limited to the following information:
  - A. Name, postal address, e-mail address and phone number(s) of the applicant;
  - B. 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;
  - C. A copy of the valid certificate of occupancy for the qualifying business;
  - D. A copy of the current liability insurance for the applicant and fee simple owner of property underlying the qualifying business;

- E. 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, 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;
  - F. Photographs, drawings or manufacturer's brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects relating to the parklet improvements;
  - G. 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;
  - H. Any permits or approvals required from any other governmental agency necessary to operate the parklet;
  - I. 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.
  - J. Eligible locations for parklets shall be limited to the following unless otherwise approved by the City's Planning and Zoning Commission:
    - 1) 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;
    - 2) Parklets are generally permitted on streets with a running slope (grade) of five (5) percent or less.
    - 3) Parklets shall be located on streets with traffic speeds of 25 mph or less;
    - 4) Parklets shall not block access to public utilities, hydrants, sidewalks, alleys or driveways.
2. The planning and zoning department shall review the materials in subparagraph (1)

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 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 City.

3. At all times the permit for 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.
4. In the event the permittee desires to make modifications to the parklet site plan or parklet improvements after initial approval is granted under subsection (2) above, such proposed modifications shall be submitted to the planning and zoning 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.

#### **142.06 CONSTRUCTION OF PARKLET IMPROVMENTS.**

1. 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 City. The permittee shall construct the parklet in accordance with the following terms and conditions:
  - A. The permittee shall prepare construction plans and specifications based on the parklet site plan approved by the planning and zoning department in accordance with the provisions set forth in section 142.05 above. The construction plans and specifications shall be in accordance with the City's engineering standards and shall be submitted to the planning and zoning department 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 Iowa Building Code, applicable unified land development regulations, applicable City Codes, and city engineering regulations.
  - B. After approval by the planning and zoning department, 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 City.

- C. 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 planning and zoning department prior to commencement of construction.
- D. Parklet construction and installation must be overseen by an insured, certified contractor.
- E. 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 City.

#### **142.07      PARKLET OPERATION AND CONDITIONS.**

1. 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.
2. 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.
3. General landscape maintenance attendant to the parklet should be performed on a regular basis at the permittee's sole cost and expense.
4. Awnings, umbrellas and other decorative material accessory to the parklet shall be fire retardant, pressure treated or manufactured of fire resistive material. No patio heaters or heat lamps shall be allowed on the parklet unless otherwise approved by the City's Fire Chief, or their designee.

5. 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.
6. 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.
7. 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.
8. 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.
9. No portion of any object placed within the parklet boundary shall extend into an adjacent pedestrian sidewalk.
10. 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.
11. 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.
12. A permittee may sell and serve alcohol beverages in a parklet only if the permittee complies with all the requirements for obtaining an alcohol beverage license, and the parklet is listed on the alcohol beverage license application as being a part of the licensed premises. In such cases, alcohol may be served at the parklet under the following conditions:
  - a. The permittee has a valid and appropriate retail alcohol beverage license for the principal premises.
  - b. The retail alcohol beverage license premises description includes the parklet in the description of the licensed premises as an extended area.
  - c. The retail alcohol beverage license permits the sale of the type of alcohol beverages to be served in the parklet.
  - d. Alcohol beverages are sold and served by the licensee or licensee's employees and sold or served only to patrons seated at tables in the parklet.

- e. Alcohol beverages are served by the licensee or the licensee's employees in compliance with alcohol beverage laws, ordinances and regulations.
  - f. Alcohol beverages may only be served at the parklet when food service is available through the licensed establishment.
  - g. The permittee shall be responsible for policing the parklet area to prevent underage persons from entering or remaining in the parklet, except when underage persons are allowed to be present on the licensed premises under applicable laws.
  - h. The area of the restaurant from which the alcohol beverages are dispensed shall be located indoors and shall not be located in the parklet area.
  - i. At times of closing or during times when consumption of alcohol beverages is prohibited, permittee shall remove from the parklet area all containers used for or containing alcohol beverages. No container of alcohol beverages shall be present in the parklet between 11:00 p.m. and 8:00 a.m.
13. No smoking and/or use of tobacco of any kind shall be permitted within the parklet license area. The permittee shall purchase a minimum of two (2) "No Tobacco" signs for each entrance of the parklet.
  14. No advertising signs or business identification signs shall be permitted within the parklet license area.
  15. No food preparation, food or beverage station, refrigeration apparatus or equipment shall be allowed on the parklet unless authorized by the planning and zoning department as part of a special event.
  16. 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.
  17. If found necessary for the protection of health, safety and welfare of the public, the City Administrator or their 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 Administrator, 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.
  18. 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.
  19. 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.

20. 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.
21. The permittee is responsible for the costs associated with removal of the parklet platform and accessories.
22. The city and its officers and employees shall not be responsible for parklet or parklet components relocated during emergencies.
23. Amplified or non-amplified music may be permitted within the parklet area, upon recommendation of the planning and zoning department and subject to the approval of the City Administrator, or their 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.
24. 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.
25. 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.
26. Parklets shall be required to have soft-hit posts, wheel stops and barriers on all edges of the parklet platform.
27. The parklet shall be constructed and installed to conform to all applicable federal, state or county laws or regulations.
28. There shall be a minimum of five (5) feet wide clear path between the parklet and any abutting sidewalks for pedestrians at all times.
29. 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.

30. The permittee shall have the continuing obligation of compliance with the Americans with Disabilities Act, as same may be amended from time to time.
31. 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.

#### **142.08 DATES AND HOURS OF OPERATION**

1. Parklets shall be permitted from April 1<sup>st</sup> through October 31<sup>st</sup>, unless otherwise approved by the planning and zoning department. Parklets that have not been removed after October 31<sup>st</sup> may be removed by the City at the permittee's expenses.
2. The parklet shall only be open and available for serving permittee's patrons between the hours of 8:00 a.m. and 11:00 p.m.

#### **142.09 TAXES, ASSESSEMENTS; OPERATING COSTS AND UTILITY CHARGES.**

1. 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. 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.
2. 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.

**142.10 INDEMNITY AND INSURANCE REQUIREMENTS.**

1. 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, 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.
2. 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:
  - A. Commercial general liability.
    - 1) Limits of liability:  
Bodily injury and property damage liability:  
Each occurrence—One million dollars (\$1,000,000.00)
  - B. Business automobile liability.
    - 1) Limits of liability:  
Bodily injury and property damage:  
One million dollars (\$1,000,000.00) combined single limit, per occurrence;  
Including hired, borrowed or non-owned autos.
  - C. Employer's liability.
    - 1) Limits of liability:  
One hundred thousand dollars (\$100,000.00) for bodily injury caused by an accident, each accident;  
One hundred thousand dollars (\$100,000.00) for bodily injury caused by disease, each employee;  
Five hundred thousand dollars (\$500,000.00) for bodily injury caused by disease, policy limit.

The permittee shall deliver to the City 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 planning and zoning department the renewal policy at least twenty (20) days before the existing policy expires.

3. 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.

#### **142.11 DENIAL; REVOCATION OR SUSPENSION OF PERMIT.**

1. The planning and zoning department may deny, revoke or suspend a permit for a parklet if it is found by the department that:
  - A. Any required business or health permit has been suspended, revoked or cancelled.
  - B. The permittee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.
  - C. Violation of any of the conditions set forth in section 142.07, Parklet Operation and Conditions, or any other provision of the Windsor Heights Code of Ordinances.
  - D. The permittee has failed to correct violations of this chapter or conditions of the permit within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the permittee by registered mail, return receipt requested to the last address provided by the permittee to the City.
2. The permit for a parklet may be suspended under the following conditions:
  - A. 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 Planning and Zoning Commission after at least fifteen (15) days advance notice to permittee that the matter will be considered by the City's Planning and Zoning 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 Planning and Zoning Commission.
  - B. In the event permittee is in violation of any material term or condition of this parklet revocable license, as reasonably determined by the City Administrator, 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, 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 Administrator, the authority granted by the parklet revocable license or permit may be temporarily suspended by the City Administrator for a period not exceeding fourteen (14) days.

- C. 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 Administrator 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, twenty-four (24) hour advanced written notice shall be provided to permittee by registered mail, return receipt requested to the last address provided by the permittee to the City. 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's Planning and Zoning Commission.
3. 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.

#### **142.12 APPEALS.**

1. 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 Administrator.
2. The City Administrator shall place the appeal on the next available regularly scheduled City Planning and Zoning Commission agenda. At the hearing upon appeal, the City Planning and Zoning Commission shall hear and determine the appeal, and the decision of the City Planning and Zoning Commission shall be final and binding and effective immediately.
3. The filing of a notice of appeal by a permittee shall not stay an order by the planning and zoning director, or their designee, 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 Planning and Zoning Commission.

#### **142.13 CITY-OWNED PARKLETS.**

In the event the City chooses to purchase parklets to be owned by the City, the City may choose to lease such parklets to eligible persons, under the following conditions:

1. The leasing applicant shall submit an application and proposed site plan for approval

in accordance with the terms set forth in Section 142.05.

2. Upon approval of the permit and site plan by the planning and zoning department, the proposed permit shall be presented to the City Council for final approval by resolution.
3. The application fee and scheduled rental fee for leasing a City-owned parklet shall be determined by the City Council and established by resolution.
4. The leasing applicant shall be required to enter into a formal Parklet Use Agreement, in a form and pursuant to the terms as determined by the City Council and City's legal council.
5. The planning and zoning department, with final approval of the City Council and City's legal council, shall have full discretion to determine the parklet rental terms, including, *inter alia*, length of lease term, location of parklet placement, and terms of use.
6. The lessee must comply with all other obligations set forth in this Code Chapter, including parklet operation and conditions; dates and hours of operation; taxes, assessments, operating costs and utility charges; and indemnity and insurance requirements.
7. The City and/or an agent thereof shall be responsible for transporting the leased parklet to the approved location and providing for installation. The City and/or its agent shall invoice the lessee for the actual costs associated with transporting and installing the parklet, and the lessee shall be obligated to reimburse the City for such costs within thirty (30) days of receipt of the invoice.
8. The lessee shall be responsible for any damage to the parklet during the term of the lease.
9. The planning and zoning department may deny or revoke a parklet lease if it is found that:
  - a. Any required business or health permit has been suspended, revoked or cancelled.
  - b. The lessee does not have the insurance that is correct and effective in the minimum amounts described in section 142.10.
  - c. Violation of any of the conditions set forth in section 142.07, Parklet operation and conditions, or any other provision of the Windsor Heights Code of Ordinances.
  - d. The lessee has failed to correct violations of this chapter or conditions of the

lease within three (3) days of receipt of the planning and zoning department's notice of same delivered in writing to the lessee by registered mail, return receipt requested to the last address provided by the lessee to the City.

- e. In the event that the parklet lease 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 area for a superior conflicting municipal purpose or (c) determines that continuation of the parklet lease granted herein is no longer in the best public interest, all as determined by the City Council after at least fifteen (15) days advance notice to lessee that the matter will be considered by the City's Planning and Zoning Commission, then, in that event, the parklet lease granted herein shall be terminable, in whole or in part, at the will of the Planning and Zoning Commission.
  - f. In the event that emergent conditions arise within the parklet area that present an imminent threat to the health, safety or welfare of persons or property.
10. Upon denial or revocation, the planning and zoning director shall give notice of such action to the lessee in writing stating the action which has been taken and the reasons therefor. The lessee shall have appeal rights as set forth in Section 142.12.



Views from front door of Baru66 and from within the patio/parklet



Views from street in front of Baru66 and plan view of the patio/parklet

