

ORDINANCE NO. 1772

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 17.28.206 OF THE SAN CLEMENTE MUNICIPAL CODE, REGULATING TEMPORARY PARKLET DINING, WHICH ESTABLISHES STANDARDS FOR OUTDOOR DINING AREAS AND SUNSETS ON JULY 1, 2026.

WHEREAS, after the 2021 legislative session, the Governor of the State of California signed into law various bills supporting small businesses, including AB 61 and SB 314, which provide regulatory flexibility in the service areas for alcohol and relief from parking standards while encouraging local agencies to adopt ordinances and regulations as are herein proposed that streamline the approval for outdoor dining; and

WHEREAS, on November 16, 2021, the City Council directed staff to initiate a Zoning Amendment to establish a new temporary outdoor dining program as promoted by AB 61 and SB 314; and

WHEREAS, proposed regulations and design guidelines were discussed by the City's Design Review Subcommittee (DRSC) on December 15, 2021 and January 12, 2022 and also by the Planning Commission on February 16, 2022; and

WHEREAS, on March 2, 2022, the Planning Commission held a duly noticed public hearing on the zoning amendment, and considered evidence presented by City staff and other interested parties and recommended approval of the zoning amendment; and

WHEREAS, on March 15, 2022, the City Council held a duly noticed public hearing on Ordinance 1727 and adopted the ordinance on April 5, 2022 upon its second reading of San Clemente Municipal Code (SCMC) section 17.28.206, which expired, consistent with AB 61 and SB 314 on December 31, 2023; and

WHEREAS, the Governor of the State of California signed into law AB 1217 after the 2023 legislative session, which extends the framework for outdoor dining facilities until July 1, 2026; and

WHEREAS, on November 7, 2023, the City Council initiated a Zoning Amendment to consider extending the Parklet Program governed by SCMC section 17.28.206 for Temporary Outdoor Dining until July 1, 2026; and

WHEREAS, on December 6, 2023, the Planning Commission held a duly noticed public hearing regarding Zoning Amendment 23-424 and considered the facts and evidence presented within the staff report and by any interested members of the public and recommended that the City Council approve Zoning Amendment 23-424; and

WHEREAS, on January 16, 2024, the City Council held a duly noticed public hearing regarding Zoning Amendment 23-424 and considered the facts and evidence presented within the staff report, the recommendation of the Planning Commission, and testimony by any interested members of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals.

The City Council hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

Based upon its review of the entire record, including the staff report, any public comments or testimony presented to the City Council and the Planning Commission, and the facts outlined below, the Planning Commission determined, and the City Council agrees, that Zoning Amendment 23-424 is consistent with the intent of the State enabling legislation (AB 1217) which encourages local agency adoption of ordinances that support small businesses through the adoption of outdoor dining programs and policies. The City Council finds and determines that Zoning Amendment 23-424 is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (14 CCR § 15301, Class 1: Existing Facilities); Section 15303(e) (14 CCR § 15303(e), Class 3: New Construction or Conversion of Small Structures); Section 15304(e) (14 CCR § 15304(e), Class 4: Minor Alterations to Land); Section 15305(b) (14 CCR § 15305(b), Class 5: Minor Alterations in Land Use Limitations); and Section 15311 (14 CCR § 15311, Class 11: Accessory Structures) because the Ordinance temporarily extends current regulations and guidelines for temporary outdoor dining spaces and activities adjacent to existing food and beverage businesses, which constitute minor encroachments into the City's rights-of-way and will not result in a direct or foreseeably indirect substantial impact on the environment.

Section 3. Zoning Amendment Findings

With respect Zoning Amendment 23-424, the City Council finds as follows:

- A. The proposed amendments are consistent with the General Plan and numerous General Plan Policies, such as:
- LU-11.03. Flexibility. We allow flexibility to accommodate market changes for the mix of uses identified in the Del Mar/T-Zone Mixed Use Guide, if doing so promotes

achieving the Area’s vision and improves livability, reduces vehicular trips, creates community gathering places and activity nodes, or helps strengthen its character and identity.

- LU-11.04. Outdoor Dining. We encourage the development of outdoor dining and other similar uses which do not impede pedestrian use of the sidewalks.
- LU-11.05. Bike and Pedestrian Environment. We provide a high quality bicycle and pedestrian environment with “living street” designs, consistent landscaping, lighting, sidewalks, traffic calming measures, bikeways and trails, consistent with the Bicycle and Pedestrian Master Plan, Tree Ordinance and Design Guidelines.
- M-2.54. Beneficial Commercial Uses on Public Sidewalks. We may approve certain commercial uses on public sidewalks in the Pedestrian Overlay District when those uses benefit the overall pedestrian environment.

The proposed amendment would update a regulatory document, the Municipal Code, to implement a temporary program for outdoor dining that improves the street scene and environment, supports local businesses, and “creates community gathering places”, strengthening the community character as referenced in LU-11.03.

- B. The proposed amendments will not adversely affect the public health, safety, and welfare, in that they further the General Plan objectives of meeting community values, needs and conditions.

Section 4. Municipal Code Title 17 Zoning Amendment.

SCMC section 17.28.206 shall be amended to reflect a program termination date of July 1, 2026, consistent with Assembly Bill 1217. Redline revisions reflecting this change are appended as Exhibit A to this Ordinance and incorporated herein by this reference (underlines indicate additions and ~~strikeouts~~ indicate deletions).

Section 5. Publication. The City Clerk shall certify to the adoption of this ordinance by the City Council and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

Section 6. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council’s findings

and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.

Section 7. Severability.

If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 8. Effective Date.

This Ordinance takes effect within 30 days after adoption of this Ordinance by the City Council.

Section 9. Reference to Existing Provisions.

All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

APPROVED AND ADOPTED this ___th day of _____, 2024.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) **ss.**
CITY OF SAN CLEMENTE)

I, **LAURA CAMPAGNOLO**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1772 having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, 2024, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

 CITY CLERK of the City of
 San Clemente, California

APPROVED AS TO FORM:

 Elizabeth A. Mitchell, CITY ATTORNEY

17.28.206 Temporary Parklet Dining

- A. **Purpose and Intent.** The temporary parklet regulations and design standards are established under State enabling legislation (AB 1217), which allow local agencies to adopt a program to support local business recovery from the impacts of the coronavirus pandemic by providing relief from parking restrictions to accommodate outdoor dining.
- B. This Section models the State's intent to allow for a streamlined process to expand temporary outdoor dining areas. This program is temporary, with a termination date of July 1, 2026. Requests for Permanent Outdoor Dining areas on either private or public property should refer to SCMC 17.28.205 - Outdoor Dining Areas.
- C. **Applicability.** This section shall apply to temporary outdoor facilities that are accessory to a food or beverage business licensed in the City of San Clemente. The facilities may be established:
 - a. On the public right-of-way on streets with a speed limit of 25 mph or less; or
 - b. On private property.
 - c. Additionally, a business may apply for use of sidewalk space where the public path of travel is greater than 10 feet in width under the exception process outlined in subsection D.
- D. **Review Requirements.** Requests for Parklet Permits that comply with this title and the approved Parklet Design Guidelines will be approved ministerially.
 - a. General standards: These regulations apply to all temporary outdoor food and beverage spaces, both on public and private property:
 - i. Hours of operation.
 - 1. Alcohol, food, or beverages shall not be served or allowed within the outdoor dining area:
 - a. Before 7:00 a.m. and after 9:00 p.m. Sunday through Thursday; and
 - b. Before 7:00 a.m. and after 10:00 p.m. Friday through Saturday and the day prior to a City Holiday.
 - 2. Outdoor Dining Areas shall comply with all State of California Department of Alcoholic Beverage Control license requirements, as applicable.
 - ii. Use of space.
 - 1. Smoking or vaping shall not be permitted within the outdoor dining areas.
 - 2. Outdoor cooking and food preparation within the outdoor dining area is prohibited.
 - 3. Live entertainment, including but not limited to live music and performances, is not permitted within the outdoor dining area and must be requested separately via a Special Events Permit or Special Activities Permit.
 - iii. Accessibility.
 - 1. A path of travel not less than five feet in width must be maintained free and clear adjacent to any outdoor dining area.
 - 2. An accessible path of travel shall connect the sidewalk to the accessible entry, deck surface, wheelchair turning space, and wheelchair resting space.
 - 3. A clear area of 60 inches in diameter located entirely within the outdoor dining area shall be provided for wheelchair turning, with a maximum overlap of 12 inches on the curb and sidewalk.

4. At least one wheelchair accessible seating space shall be provided for every 20 seats, or portion thereof.
 5. Accessible Deck Surface:
 - a. The accessible deck surface maximum cross slope (perpendicular to the sidewalk or curb) and the maximum running slope (parallel to the curb) shall not exceed two percent.
 - b. The surface of the accessible route, clear floor spaces, and turning spaces shall be firm, stable, and slip-resistant.
 - c. Openings in floor or deck surfaces shall not allow the passage of a sphere more than half an inch in diameter. Elongated openings shall be placed so that the longer dimension is perpendicular to the dominant direction of travel.
 - iv. Design Guidelines: Additional guidelines may be contained within the City's Parklet Design Guidelines, which the City may adjust from time to time.
 - v. Exceptions: Exceptions to the standards listed herein shall require a review by the Design Review Subcommittee, which shall provide a recommendation to the Community Development Director or Deputy Director. The Community Development Director shall make a final determination, appealable to the Planning Commission per the City's standard Appeals process (See 17.12.140 - Appeals of an Action).
- b. Parklets in the Street (Public Right-of-Way):
- i. Allowed Locations: Parklets may only be located adjacent to eating and drinking establishments at the following locations:
 1. Within the curb lane on streets where on-street metered or unmetered parking spaces exist adjacent to the front of the eating and drinking establishment; and
 2. Behind the buffer zone as indicated within the Parklet Design Guidelines. Each business is responsible for its own costs associated with procurement and installation of the buffer zone and parklet materials.
 3. Parklets may occupy up to three angle-in parking spaces or up to two parallel parking spaces. No more than six consecutive spaces may be used for outdoor dining operations.
 - ii. Prohibited locations: Parklets may not be located or placed at any of the following locations:
 1. Along a street segment with a speed limit greater than 25 miles per hour.
 2. Within 10 feet away from any intersection, street corner, alley, or driveway. The Public Works Department may increase or decrease this distance based on a site specific review of line of sight conditions; and
 3. Within an existing bike lane or within a proposed bike lane project identified in any of the City's comprehensive bicycle plan(s) or adopted land use plan(s).
 4. Within five feet of storm drain inlets or cleanouts.
 5. Over utility access panels, manhole covers, handholes, transformers, water meters, or water valves.
 6. Within five feet of a fire hydrant and/or any related emergency equipment.
 7. Within five feet of any natural gas or electric utility facility, including but not limited to any manholes, handholes or vaults, and any surface-level structures such as natural gas meters, monitors, pressure regulators, protection stations, poles, curbside electric meters, transformers, or green utility boxes.

- iii. Limitations:
 - 1. Parklets may occupy an on-street ADA parking space that is adjacent to the business's frontage; however, this request requires an applicant undergo the additional exceptions process, requiring review by the Design Review Subcommittee (DRSC) with input from the Public Works Director. The applicant shall be responsible for any costs associated with relocating accessible parking space, which shall be within 150 feet from the original space.
 - 2. The number of temporary parking waivers approved in the Downtown Parking Study area as part of the Limited Term Parking Relief Agreements shall not exceed 117, which is the number of unutilized parking waivers in the Downtown Parking Study Area as of February 16, 2022. (See SCMC 17.64.125.A.2).
 - a. A maximum of 42 parking spaces may be used on Avenida Del Mar for the purpose of parklets.
 - 3. Parklets are limited to 24 seats per business.
- iv. Design Requirements for Parklets on public streets: Businesses should reference the City's Parklet Design Guidelines, which include (but are not limited to) the following standards:
 - 1. The width of the parklet shall not extend within four feet of the edge of the street travel lane.
 - 2. A parklet shall provide a setback of at least two feet from adjacent vehicle parking spaces.
 - 3. The deck of the parklet platform shall be flush with the sidewalk.
 - 4. Street deck/platforms should have a five inches by 18 inches minimum opening for curb drainage, unless approved otherwise by the City Engineer.
 - 5. Openings in floor or deck surfaces shall not allow the passage of a sphere more than half an inch in diameter.
 - 6. Bolting of fixtures, decks, and other surfaces into or onto the street, or otherwise penetrating into the surface of the road, shall not be permitted.
 - 7. A 42 inch high railing shall be placed at the edge of the parklet to serve as a barrier from vehicular traffic.
 - 8. No object, structure, or fixture shall stand or be placed more than 42 inches above the floor of the parklet, except for umbrellas and standing heaters, which may be up to eight feet in height. The business is responsible for securing umbrellas and heaters from wind.
 - 9. Umbrellas with an overhang of a minimum of 84 inches from the finished grade of the deck and/or sidewalk may be used in conjunction with a parklet, but no other covering, awning, roof, or shelter is permitted over the parklet. The canopy of the umbrella shall be contained within the parklet and shall not protrude into the sidewalk, adjacent parking spaces, adjacent parklets, or the travel or bike lane.
 - 10. Solar powered lights shall be permitted within the parklet, but electrical lighting elements that contain wires that cross the clear path of travel shall not be permitted.
 - 11. Signs: Only blade, menu, or stanchion signs are permitted within or around the parklet. Each business may only have four square feet of such signage, where only one side of a double-faced sign is counted toward this limit. Signs shall not exceed seven feet in height and shall not overhang the public sidewalk, adjacent parking spaces, adjacent parklets, or the travel or bike lane.
 - a. A business that shares the frontage area of an adjacent business (which itself does not have its own parklet area) shall also pay for and produce a four

square-foot blade sign with the name of the neighboring business using that business's trademark or logo if applicable. The neighboring business may waive this requirement in writing to the City if they do not desire the additional signage.

- b. Signs shall be specifically identified and requested within the Parklet application and shall not require a separate Administrative Sign Permit.

c. Parklets on Private Property:

- i. Allowed Locations: Parklets may be permitted in any Zone as an accessory use of any food or beverage business with an active San Clemente Business License.

- 1. Private Parklets may be established on private property in areas that do not obstruct required paths of travel and do not remove more than three parking spaces attributed to the business.
- 2. The locations on private property should be within parking stalls, unless approved otherwise by the City Engineer or City Planner.

- ii. Prohibited locations: Parklets may not be located or placed at any of the following locations:

- a. ADA parking stalls.
- b. Within five feet of a fire hydrant and/or any emergency equipment.
- c. Within five feet of any natural gas or electric utility facility, including the perimeter of any manholes, handholes or vaults, and any surface-level structures such as natural gas meters, monitors, pressure regulators, protection stations, poles, curbside electric meters, transformers, or green utility boxes.

- iii. Design Requirements for Parklets on private property: Businesses should reference the City's Parklet Design Guidelines, which include (but are not limited to) the following standards:

- a. Private parklets are encouraged, but not required, to construct wooden platforms or decks under 30 inches in height and flush with the nearest path of travel.
- b. A parklet shall provide a setback of at least two feet from adjacent vehicle parking spaces.
- c. A backup distance of 20 feet must be maintained between the parklet edge and nearby parking stalls.
- d. Private parklets are encouraged to use market umbrellas for shade, but may use a single large tent (if approved by OCFA). They may not use 10-foot square pop up tents.
- e. A 42 inch high railing shall be placed at the edge of the parklet to serve as a barrier from vehicular traffic within parking lots.
- f. Parklets are limited to 24 seats per business.

d. Limited Term Parking Relief Agreement Requirements:

- i. Prior to installation of any furniture or improvements and prior to operation of a parklet, an applicant shall obtain a Limited Term Parking Relief Agreement.

- a. Requests for approval of Limited Term Parking Relief Agreements that comply with the standards set forth in 17.28.206 and the City's Parklet Design Guidelines shall be reviewed administratively and approved by the City Manager or his or her designee.
- b. Agreements shall specify a fee, as set by the City Council, for the use of and operation of the parklet;
- c. Agreements shall require Insurance coverage, including Commercial General Liability, personal injury, and property damage liability, with minimum combined liability limits of \$1,000,000.00 per occurrence.
 - ii. Additional standards for parklets in the street / public right-of-way:
 - a. Prior to installation of any furniture or improvements, a Limited Term Parking Relief Agreement must be executed between the City and the applicant.
 - b. Parklets shall follow standard dimensions and plans as indicated within the Parklet Design Guidelines. Deviations from the standard approved construction templates shall require review by the Design Review Subcommittee.
 - c. During hours of non-operation, tables shall be removed, but all chairs shall remain in a secured fashion that allows public access to the space outside of restaurant operating hours.
 - d. Limited Term Parking Relief Agreements may indicate certain dates or events during which the restaurant shall agree to public or non-profit use of the parklet space.
 - iii. Parklets shall be removed at the business operator's expense within 30 days of the end of the Parklet Program, which expires July 1, 2026.

(Ord. No. 1727 § 4, 2022)

Editor's note(s)—Ord. No. 1594, § 3(Exh. A, § 29), adopted May 5, 2015 repealed § 17.28.206, which pertained to Outdoor dining areas on public property, permanent and accessory and derived from Ord. 1308 § 11, adopted in 2006; Ord. 1182 § 11, adopted in 1997; and Ord. No. 1561, § 3(Exh. A, §§ 14—16), adopted Nov. 27 2012.