

LEGISLATIVE SUMMARY
Mayor's Office of Capital Projects
Division of Engineering and Construction

**Amend Codified Ordinances 513, 241.21(a), and creation of Ordinance 518
Related to Patio and Parklet permits within the Right-of-Way**

Ordinance No: 704-2023

Legislative Purpose: Amending Codified Ordinances 513, 241.21(a), and creation of Ordinance 518 which authorized the Departments of MOCAP to issue permits concerning outdoor patios and parklets within the City of Cleveland Right-Of-Way passed on various dates, which authorized the Department of MOCAP to issue patio permits within the Right-of-Way.

Codified Ord. No. 513: ISSUANCE OF TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS FOR OUTDOOR RESTAURANTS. This allows for the Director of MOCAP to issue patio permits to outdoor restaurants. Based on requests from other businesses, this is being opened to any business that wishes to have an outdoor patio or parklet within the Right-of-Way. This ordinance also enacts portions of the old Temporary Expansion Area (TEA) ordinance, revises needed changes to permit process, and violations of said ordinance.

Codified Ord. No. 241.21: This is a different ordinance that duplicates 513 and refers to 513 within the ordinance. We are requesting removal of this ordinance to remove any conflicts.

Codified Ord. No. 518: Issuance of Public Occupancy Parklet Permits. This new ordinance will allow CDCs and potentially other Non-Profit organizations to sponsor a parklet area for the benefit of creating additional public seating within the Right-of-Way. This ordinance also enacts portions of the old Temporary Expansion Area (TEA) ordinance.

Ward: All Wards

Attachments: Details of codified ordinance changes for section 513, 241.21, and new ordinance 518.

TOORS Permits

Title Change

Existing: ISSUANCE OF TEMPORARY PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS FOR OUTDOOR RESTAURANTS

Revised: **Issuance of Temporary Right of Way Occupancy of Outdoor Patios Permits**

Reason: Since these will be for the entire ROW and changing other items, this title better fits for the new TROOP permit.

513.01(a) – Definitions

Existing: “Director” means the Director of Public Service or his or her designee.

Revised: “Director” means the Director of **Mayor’s Office of Capital Projects** or his or her designee.

Reason: Director name change

513.01(b) – Definitions

Existing: “Outdoor Restaurant” means a portion of a public sidewalk, court, alley, street, or other public right-of-way that is used by a business establishment to serve food and beverage.

Revised: “Outdoor **Patio**” means a portion of a public sidewalk, **bump-out**, or street that is used by a business establishment to serve food and/or beverage.

Reason: changed definition and removed restaurant and replaced with patio

513.01(c) – Definitions

Existing: “Permit” means a temporary public right-of-way occupancy permit authorized by Section 513.02 of the Codified Ordinances

Revised: “Permit” means a temporary right-of-way occupancy **of outdoor patios** permit authorized by Section 513.02 of the Codified Ordinances

Reason: changed definition and removed restaurant and replaced with patio

513.01(d) – Definitions

Existing: “Permittee” means the person who owns the outdoor restaurant permitted to occupy an area of the public right-of-way.

Revised: “Permittee” means the person or entity who owns the outdoor restaurant / establishment permitted to occupy an area of the public right-of-way.

Reason: Director name change

513.01(g) – Definitions

Existing: None

Revised: “Bump-Out” means an extension of the sidewalk into a typical street parking lane or driving lane.

Reason: Defining bump-out

513.01(h) – Definitions

Existing: None

Revised: “Parklet” means the area, within an existing curb lane where street parking is always allowed, where the permittee may utilize for dining and/or beverage consumption..

Reason: Defining parklet

513.02 – Temporary Public Right-of-Way Occupancy Permits

Title Change: Temporary Right-of-Way Occupancy of Outdoor Patios Permits

Reason: Changing title to name of permit

513.02 – Temporary Public Right-of-Way Occupancy Permits

Existing: Notwithstanding any codified ordinance to the contrary, the Director of Public Service is hereby authorized to issue temporary public right-of-way occupancy permits revocable at the will of the Council authorizing the placement of outdoor restaurants at permitted locations on sidewalks, courts, alleys, streets or other public rights-of-way in the City, subject to the provisions of this chapter. A separate encroachment permit for such outdoor restaurants shall not be required.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk, court, alley, street or other public right-of-way with an outdoor restaurant without first obtaining a permit in accordance with this chapter. Any business owner or operator occupying any portion of a public sidewalk, court, alley, street or other public right-of-way without a permit as required by this chapter shall be subject to the fines and penalties set forth in Sections 513.09 and 513.99 of this chapter.

Revised: Notwithstanding any codified ordinance to the contrary, the Director of **Mayor's Office of Capital Projects** is hereby authorized to issue temporary public right-of-way occupancy permits revocable at the will of the Council authorizing the placement of outdoor **patios** at permitted locations on sidewalks, courts, alleys, streets or other public rights-of-way in the City, subject to the provisions of this chapter. A separate encroachment permit for such outdoor **patios** shall not be required.

No owner or operator of a business establishment shall occupy any portion of a public sidewalk, court, alley, street or other public right-of-way with an outdoor **patio** without first obtaining a permit in accordance with this chapter. Any business owner or operator occupying any portion of a public sidewalk, court, alley, street or other public right-of-way without a permit as required by this chapter shall be subject to the fines and penalties set forth in Sections 513.09 and 513.99 of this chapter.

Reason: Director name change

513.03 (c): Applications for Permits

Existing: A description of the proposed area, with photographs, to be occupied by the outdoor restaurant and the hours and days of operation;

Revised: A description of the proposed area, with photographs, to be occupied by the **food or beverage establishment** and the hours and days of operation;

Reason: This permit is for food and/or beverage establishments, not just restaurants

513.03 (f): Applications for Permits

Existing: A signed statement that the applicant is the owner of the business establishment immediately adjacent to the proposed area to be occupied by an outdoor restaurant;

Revised: A signed statement that the applicant is the owner of the business establishment immediately adjacent to the proposed area to be occupied by an outdoor **patio**;

Reason: This permit is for food and/or beverage establishments, not just restaurants

513.03 (g): Applications for Permits

Existing: A description of the type of food and beverage to be served;

Revised: A description of the type of food and/or beverage to be served;

Reason: This permit is for food and/or beverage establishments, not just restaurants

513.03 (i): Applications for Permits

Existing: Evidence that all required health licenses, including, but not limited to, the license required by section 241.21 of the Codified Ordinances, have been obtained or have been applied for; and

Revised: Prior to being issued a TROOPS permit, permittee shall submit a maintenance bond in the amount of the \$10,000. The Director of the Mayor's Office of Capital Projects may draw from this maintenance bond, if the permittee goes out of business and does not remove and restore the right of way to the condition as it was prior to placement of the equipment, fencing, appurtenances, etc within the right of way, to restore the right of way to its previous condition and remove any items from the right of way pertaining to this permit. This maintenance bond will give the City of Cleveland the right to draw from it as necessary based on the situation indicated previously.

Reason: Instead of having the property owner be responsible for removal of equipment and fencing and restoring ROW to previous condition, this maintenance bond can be utilized. Also removing reference to 241.21, which is for patios on private property.

513.04(a): Permit Fee, Issuance and Duration

Existing: An application for a permit shall be accompanied by a fee of two hundred dollars (\$200.00) for each outdoor restaurant for which a permit is desired. If the applicant is not issued a permit, the fee shall be refunded, except one hundred dollars (\$100.00) for administrative expenses.

Revised: Upon approval of the application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control in order to recover the City's costs related to the temporary right-of-way occupancy for outdoor patio permit and the associated inspection costs.

Reason: Currently, the fees and inspection costs are stated specifically in the ordinance. All other fees for our section are stated via the Board of Control. It would be much better for us, if we are to potentially revise fees every 5 years or so, to do so through the same mechanism. Also, the fees should not be collected until after approval as with other permits so that we are not holding on to checks for two to three months.

513.04(b): Permit Fee, Issuance and Duration

Existing: On approval of the application by the Director of Public Health, the Director of Public Safety, the Director of Public Service, the Director of the City Planning Commission, the Secretary of the Landmarks Commission, as applicable, and on compliance with the Council notification provision described below, the Director of Public Service shall issue a permit under this chapter. Denial of a permit may be appealed to the Board of Zoning Appeals.

Revised: If the application location is on the sidewalk, approvals of the Director of Public Health, the Director of Public Safety, and the Director of Mayor's Office of Capital Projects are required.

The Director of City Planning or the Secretary of the Landmarks Commission are required depending on if the location is in a landmarks district.

If the application location is on the street, approvals of the Director of Public Health, the Director of Public Safety, the Director of Public Works, and the Director of Mayor's Office of Capital Projects are required. The Director of City Planning or the Secretary of the Landmarks Commission are required depending on if the location is in a landmarks district. If the applicant is proposing to build a structure (i.e. a raised platform), then approval from the Chief Building Official is required.

Once the required approvals have been made, and in compliance with the Council notification provision described below, the Director of Mayor's Office of Capital Projects shall issue a permit under this chapter. Denial of a permit may be appealed to the Board of Sidewalk Appeals. Upon approval, the Chief Building Official shall be notified of the number of tables that have been approved based on the permit application sketch.

Reason: Director name change and explaining who needs to approve under certain circumstances. Also change initial appeal to Board of Sidewalk Appeals.

513.04(c): Permit Fee, Issuance and Duration

Existing: No permit shall be issued until the members of Council of the wards affected have been provided with written notice by the Director of Public Service and until the expiration of thirty (30) days from the date of the notice, unless the period of thirty (30) days is expressly waived by the Council members in writing. The processing of a complete application shall not take more than ninety (90) days and in the event the application is not processed within ninety (90) days, the applicant shall be entitled to a refund of the permit fee.

Revised: No permit shall be issued until the members of Council of the wards affected have been provided with written notice by the Director of Mayor's Office of Capital Projects and until the expiration of thirty (30) days from the date of the notice, unless the period of thirty (30) days is expressly waived by the Council members in writing. The processing of a complete application shall not take more than ninety (90) days and in the event the application is not processed within ninety (90) days, the applicant shall be entitled to a refund of the permit fee.

Reason: Director Name Change

513.04(d): Permit Fee, Issuance and Duration

Existing: Permits shall be valid for a twelve (12) month period, commencing April 1st and ending March 31st. Permits may be renewed, on a form provided by the Director, for the following season provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. The permit renewal fee shall be one hundred dollars (\$100.00) for each outdoor restaurant. If there are changes to the application, a new application

must be made under this application and the appropriate permit fee shall accompany the application.

Revised: Permits shall be valid for a twelve (12) month period, commencing April 1st and ending March 31st. Permits may be renewed, on a form provided by the Director, for the following season provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. **Upon approval of the renewal application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control in order to recover the City's costs related to the renewal of the temporary occupancy for outdoor patio permit and the associated inspection costs.** If there are changes to the application, a new application must be made under this application and the appropriate permit fee shall **be submitted at time of approval.**

Reason: Currently, the fees and inspection costs are stated specifically in the ordinance. All other fees for our section are stated via the Board of Control. It would be much better for us, if we are to potentially revise fees every 5 years or so, to do so through the same mechanism. Also, the fees should not be collected until after approval as with other permits so that we are not holding on to checks for two to three months.

513.04(e): Permit Fee, Issuance and Duration

Existing: None

Revised: **An applicant may apply for a Temporary Right of way Occupancy of Outdoor Patio permit for either the sidewalk/treelawn area, the street (parklet), or both. If the applicant applies for both the street and sidewalk at the same time, there shall only be one fee associated with the whole application. If the applicant applies for one location (e.g. street), is denied, and then applies for the other location (e.g. sidewalk), only one fee shall be applied. If the applicant applies for one location (e.g. sidewalk) and is approved and then applies for the other location (e.g. street) afterward, two fees shall be applied.**

Reason: The existing TEA ordinance states that you won't pay for both street and sidewalk. We are keeping this, but only if they apply for both at the same time.

513.04(f): Permit Fee, Issuance and Duration

Existing: None

Revised: **In trying to keep with a consistent curb line where parklets are being utilized, a restaurant/establishment that is approved for use of a parklet as an outdoor patio shall inform the Community Development Corporation (CDC) that supports the affiliated neighborhood so that the CDC may incorporate adjacent parklets in that area if deemed useful to the economic development and safety of the surrounding area.**

Reason: If a business is approved for a parklet, we would like to have the CDC possibly expand on that parklet so that the curblines are more consistent, which would add greater safety to the parklet area.

513.05: Permitted Locations

Existing: The Director, consistent with the provisions of this chapter and the zoning code, shall establish rules and regulations as the Director deems proper with respect to permitted locations for the operation of outdoor restaurants. The Director shall consider the operation and location of the outdoor restaurants, the maintenance of the business requesting a permit, the proximity and location of emergency exits, fire standpipes, fire hydrants, driveways, handicap ramps, handicapped parking zones, commercial loading and unloading zones, the condition of the sidewalk, and other factors he or she deems relevant. The Director may modify the rules and regulations as he or she deems necessary.

The issuance of permits and the maintenance of tables, chairs, and other structures shall be subject to the rules and regulations established by the Director, the zoning code and the following conditions and restrictions:

Revised: The Director, consistent with the provisions of this chapter and the zoning code, shall establish rules and regulations as the Director deems proper with respect to permitted locations for the operation of outdoor **patios**. The Director shall consider the operation and location of the outdoor **patios**, the maintenance of the **establishment** requesting a permit, the proximity and location of emergency exits, fire standpipes, fire hydrants, driveways, handicap ramps, handicapped parking zones, commercial loading and unloading zones, the condition of the sidewalk, and other factors he or she deems relevant. The Director may modify the rules and regulations as he or she deems necessary.

The issuance of permits and the maintenance of tables, chairs, and other structures shall be subject to the rules and regulations established by the Director, the zoning code and the following conditions and restrictions:

Reason: replacing restaurant with patios

513.05(a): Permitted Locations

Existing: (a) Outdoor restaurants shall not obstruct emergency exits or fire standpipes;

Revised: Outdoor **patios** shall not obstruct emergency exits or fire standpipes;

Reason: replacing restaurant with patios

513.05(b): Permitted Locations

Existing: (b) Outdoor restaurants shall not occupy any portion of the roadway or within two (2) feet of the curb;

Revised: Outdoor patios under Section 513 shall be handicap accessible if on the sidewalk or utilizing universal design principles if on the street. If an outdoor patio is on the street and does not have an outdoor patio on the sidewalk and Public Right of Way Accessibility Guidelines (PROWAG) are not met, the establishment must have personnel available to assist any handicapped persons into the outdoor patio area. If an outdoor patio is on both the sidewalk and the street, handicap accessibility shall be waived for the outdoor patio on the street.

Reason: This gives the TOORs permit the functionality to be placed in the street and would allow for the elimination of the TEA permit. Brings in handicap accessibility to TOORS.

513.05 (c): Permitted Locations

Existing: Outdoor restaurants shall not be permitted within six (6) feet of any fire hydrant, within five (5) feet of any driveway, within three (3) feet of any sidewalk handicap ramp, or within that portion of the sidewalk parallel to an area designated for parking, handicapped parking or commercial loading and unloading; and

Revised: Outdoor patios shall not be permitted within six (6) feet of any fire hydrant, within five (5) feet of any driveway, within three (3) feet of any sidewalk handicap ramp, or within 2' of the curb designated for parking, handicapped parking, or commercial loading and unloading unless utilizing a parklet. Outdoor patios on the street (parklets) shall not be permitted within any areas designated for handicapped parking, or where street parking is currently not allowed. Parklets may not be placed over utility access panels, manhole covers, or storm drains unless approved by the City. Parklets may not be utilized on streets with a speed limit greater than 25 mph, unless approved by the City. Parklets may not be utilized within fifty (50') feet of an intersection. The application must clearly show these items on the sketch submitted for review. Outdoor patios will be allowed where an existing bump-out is in place; and

Reason: Clarifying where outdoor patios on the sidewalk or street can be located.

513.05(e): Permitted locations

Existing: None

Revised: The outdoor patio areas must be maintained by the permitted entity. Each year, an annual inspection shall be performed by the City. Any maintenance issues found by the inspections must be completed within thirty (30) days, unless an extension is requested and approved or the permit may be revoked. If the business that is permitted is no longer functioning at that location, the City may utilize the maintenance bond for maintenance and removal of all

furniture, equipment, and other appurtenances if the business does not comply and goes out of business. The property owner may request that the fencing, equipment and appurtenances stay installed if a new business is coming to the location within sixty (60) days.

Reason: Clarification of maintenance responsibilities and holding the property owner responsible if business vacates.

513.06 (d): Permits

Existing: A statement indicating whether the permittee is authorized by the State of Ohio to serve alcohol in the outdoor restaurant;

Revised: A statement indicating whether the permittee is authorized by the State of Ohio to serve alcohol in the outdoor **patio**;

Reason: Changing wording since this is not just for restaurants

513.07 (b): Requirements and conditions of Permit

Existing: The outdoor restaurant shall be placed only on the location set forth in the permit.

Revised: The outdoor **patio** shall be placed only on the location set forth in the permit.

Reason: Changing wording since this is not just for restaurants

513.07 (c): Requirements and conditions of Permit

Existing: An outdoor restaurant located in the Central Business District shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight. An outdoor restaurant located in any district other than the Central Business District shall not operate earlier than 6:00 a.m. nor later than 11:00 p.m.

Revised: An outdoor **patio** located in the Central Business District shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight. An outdoor **patio** located in any district other than the Central Business District shall not operate earlier than 6:00 a.m. nor later than 11:00 p.m.

Reason: Changing wording since this is not just for restaurants

513.07 (e): Requirements and conditions of Permit

Existing: Permittees shall maintain all required health licenses, including, but not limited to, the license required by Section [241.22](#) of the Codified Ordinances.

Revised: Permittees shall maintain all required health licenses.

Reason: Section 241.22 pertains to outdoor patios on private property. I'm removing reference to that section since there is conflicting wording.

513.07 (f): Requirements and conditions of Permit

Existing: Permittees and their agents shall be responsible for maintaining all outdoor restaurant structures and associated equipment in good repair, free of corrosion and in a safe, sound and nonhazardous condition.

Revised: Permittees and their agents shall be responsible for maintaining all outdoor **patio** structures and associated equipment in good repair, free of corrosion and in a safe, sound and nonhazardous condition. **These will be inspected each year. If maintenance requested by the City is not performed within thirty (30) days, the permit may be revoked by the Director of Mayor's Office of Capital Projects.**

Reason: Changing wording since this is not just for restaurants and instituting regulations on maintenance.

513.07 (g): Requirements and conditions of Permit

Existing: Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter and shall provide a suitable container for the placement of paper, wrappers, and other similar items used by customers and others within the permitted area. Permittees and their agents shall maintain at least six (6) feet of unobstructed walk as required by the Director of Public Service, which shall be free of snow at all times, as required by Section [507.13](#).

Revised: Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter and shall provide a suitable container for the placement of paper, wrappers, and other similar items used by customers and others within the permitted area. Permittees and their agents shall maintain at least six (6) feet of unobstructed walk as required by the Director of **Mayor's Office of Capital Projects**, which shall be free of snow at all times, as required by Section [507.13](#).

Reason: Director name change

513.07 (h): Requirements and conditions of Permit

Existing: Permittees shall not cook food in the outdoor restaurant.

Revised: Permittees shall not cook food in the outdoor **patio**.

Reason: Not just for restaurants, keeping with outdoor patio theme

513.07 (i): Requirements and conditions of Permit

Existing: Permittees shall not place signs in the outdoor restaurant, except under a permit issued by the City of Cleveland.

Revised: Permittees shall not place signs in the outdoor patio, except under a permit issued by the City of Cleveland or as required by this ordinance. A sign stating hours of operation of the outdoor patio, whether it is for public or customer use, and permittee business name; they are optional for outdoor patios located on the sidewalk, next to the building. Graphic content shall not include commercial messages, slogans, telephone numbers, or other forms of advertising. The City shall provide the design format of the sign to the applicant. The applicant is required to purchase and install sign so that it is visible to the sidewalk and street.

Reason: Allowing for placement of sign stating hours of operation of outdoor patio.

513.07(L): Requirements and Conditions of Permit

Existing: None

Revised: The placement of an appropriate barrier where the outdoor patio located within the street shall be utilized to protect the outdoor patio area from street traffic. Pre-fabricated parklets can be utilized. Shop drawings and other necessary info shall be submitted to the City with the application for approval. The City may create a list of pre-approved pre-fabricated parklet components.

Reason: places the mandatory use of barriers to protect outdoor restaurants in the street from street traffic.

513.07(m): Requirements and Conditions of Permit

Existing; None

Revised: Any business utilizing a temporary right of way occupancy of outdoor patios in the sidewalk or street shall ensure that all building and housing regulations concerning restroom capacity is maintained and include the seating utilized for the outdoor patios.

Reason: Making sure that restroom capacity requirements are being adhered to with the additional seating capacity.

513.07 (n): Requirements and Conditions of Permit

Existing: None

Revised: Outdoor patios may be placed on top of an existing bump-out.

Reason: Allowing utilization of bump outs.

513.07 (o): Requirements and Conditions of Permit

Existing: None

Revised: Outdoor patios within the right of way (sidewalk or street) can only be utilized by a restaurant, bar or entity that serves food or beverage as its main source of income. No other uses can be utilized within the outdoor patio area.

Reason: There has been talk that entities wanted to utilize the sidewalk or street area for a mini dog park. These are only to be used for food and beverage entities.

513.07 (p): Requirements and Conditions of Permit

Existing: None

Revised: Any public usage during non-business hours as stated by signage may be construed as trespassing per section 623. Violators may be prosecuted per section 623 as applicable.

Reason: discussion on public availability during non-business hours.

513.07(q): Requirements and Conditions of Permit

Existing: None

Revised: This outdoor patio permit is only valid for the sidewalk or parklet area adjacent to the permittee business frontage. The permit can be extended past the existing frontage to another frontage if permission from the adjacent property owner(s) is obtained.

Reason: allowing for permittee to extend outdoor restaurant past their frontage.

513.07(r): Requirements and Conditions of Permit

Existing: None

Revised: If the Outdoor Patio utilizes a parklet area, the parklet shall be designed for easy removal in case of an emergency. In the case of a medical, fire, utility, or police emergency situation, The City has the authority to remove the parklet immediately out of the area. The City is not obligated to give advance notification and the City will not be responsible for damages that are incurred from moving the parklet in an emergency situation.

Reason: allowing City to remove parklet in case of emergency at no expense to City

513.07(s): Requirements and Conditions of Permit

Existing: None

Revised: When any public agency, or any private utility company or corporation must make repairs to any utilities located in, over, across, under or through the occupied premises, the

applicant shall remove the parklet from the premise within thirty (30) days or as needed, upon notification by phone, in writing, or in person. Upon completion of any repairs, the parklet may be reinstalled by the applicant. Failure by the applicant to remove the parklet as requested may result in the City and/or authorized company removing the parklet at the applicant's expense.

Reason: allowing for parklet to be removed in case of a construction project.

513.07(t): Requirements and Conditions of Permit

Existing: None

Revised: The outdoor patio area may not be multiple levels. Loose particles, such as sand or loose stone cannot be utilized within an outdoor patio.

Reason: Not allowing multi-level outdoor patios in ROW

513.07(u): Requirements and Conditions of Permit

Existing: None

Revised: If utilizing a platform within a parklet area: Any opening between the sidewalk and the deck surface of the parklet shall be flush without a horizontal or vertical separation greater than one-half (1/2") inch – use of thresholds are encouraged. Platforms shall be secured to the street. The platform shall not impede the flow of curbside drainage. Pedestrians should have the ability to see inside a parklet from the sidewalk. Overhead elements that span the sidewalk, travel lane of the road, or connect the parklet to the adjacent building are prohibited. Lighting of the parklet is required if use hours are beyond dusk. All lighting must self-powered (i.e. solar powered, battery powered, etc.) – no electrical connections to the building are allowed. Reflective material on the exterior of the parklet is required. Steps, lifts, and stairs are prohibited on a parklet.

Reason: Requirements of platform for parklets

513.08 (c): Permit Suspension and Revocation

Existing: The action of the Director may be appealed to the Board of Zoning Appeals.

Revised: The action of the Director may be appealed to the Board of Sidewalk Appeals.

Reason: Having the Board of Sidewalk appeals being the first step for any appeals.

513.08 (d): Permit Suspension and Revocation

Existing: None

Revised: If the current permit holder suspends operations permanently, their permit shall be automatically revoked and all tables, chairs, and other associated equipment placed in the public right-of-way must be removed immediately or it may be seized and removed by the City and billed to the permit holder or the property owner. The permit holder or the property owner must restore the right of way to its original condition or be in compliance with City standards and specifications as required by the Director.

Reason: Currently we have restaurants that have gone out of business and kept their fencing and equipment in the right of way.

513.08(e): Permit Suspension and Revocation

Existing: None

Revised: If the current permit holder sells their business or the liquor license is placed in a new individual's name, the new business owner / liquor license holder shall have 60 days to submit a revised application with the new information. The current permit duration will stand and there will be no fee for the permit revision. If after 60 days, the new business owner / liquor license holder does not submit a revised application, the current permit shall be revoked and all tables, chairs, and other associated equipment placed in the public right-of-way must be removed immediately or it may be seized and removed by the City. The cost of removal shall be billed to the permit holder or the property owner. The permit holder or the property owner must restore the right of way to its original condition or be in compliance with City standards and specifications as required by the Director.

Reason: Part of the application process is a copy of a valid liquor license. If the liquor license submitted in the application becomes invalid (because of a new owner or new liquor license holder), the permit should be revoked if it is not revised.

513.10 Taxes

Existing: The Permittee shall be responsible for all charges and all federal, state or local taxes, including property taxes, which may now or hereafter be imposed or levied upon the outdoor restaurant and the services provided in connection therewith.

Revised: The Permittee shall be responsible for all charges and all federal, state or local taxes, including property taxes, which may now or hereafter be imposed or levied upon the outdoor patio and the services provided in connection therewith.

Reason: Giving a specific fine

513.99 Penalty

Existing: Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense.

Revised: a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense. A fine of \$100 per day may be assessed to the permit holder, utilizing business, or the property owner.

Reason: Giving a specific fine

513.99(b): Penalty

Existing: None

Revised: Any violation of 513.05(e) can result in a fine of \$500.00. Any fees associated with the City removal of equipment, fencing, and other appurtenances can be levied onto the property tax of the associated property in question.

Reason: associated fees as a result of violation of 513.05(e).

513.99(c): Penalty

Existing: None

Revised: The Director of Mayor's Office of Capital Projects can decide to not allow any establishment to receive a Temporary Right-of-way Occupancy for Outdoor Patio permit indefinitely if that establishment has repeatedly violated any section of this ordinance or based on a recommendation by safety forces. The establishment may appeal this permanent denial to the Board of Sidewalk Appeals (soon to be Board of Right of Way Appeals).

Reason: Allowing to permanently deny outdoor restaurant license to an establishment that continually violates ordinances or is recommended by the Police or other safety forces.

241.21(a) Licensing Outdoor Restaurants: Procedure and Fee

Existing: To provide for issuance of annual licenses by the Commissioner of Assessments and Licenses and to direct the Director of Public Health to develop rules for the operations not inconsistent with state statutes and regulations, application shall be accepted by the Commissioner of Assessments and Licenses from restaurants, the approval of which will allow them to conduct commercial activity outdoors.

Revised: To provide for issuance of annual licenses by the Commissioner of Assessments and Licenses and to direct the Director of Public Health to develop rules for the operations not inconsistent with state statutes and regulations, application shall be accepted by the Commissioner of Assessments and Licenses from restaurants, the approval of which will allow them to conduct commercial activity outdoors **outside of the Public Right of Way. Any Outdoor Restaurants that wish to expand their business into the Public Right-of-Way must utilize section 513.**

Reason: Section 241.21 is in conflict with 513. It has been used for Patios on private property. This revision creates the difference between the two sections.

241.21(g) Licensing Outdoor Restaurants: Procedure and Fee

Existing: After issuance of the outdoor restaurant license, each applicant must submit an application for a sidewalk permit under [Chapter 513](#) of these Codified Ordinances.

Revised: remove 241.21(g)

Reason: This is not needed as Outdoor restaurants utilizing the public ROW should use 513.

CHAPTER 518 – Issuance of Public Occupancy Parklet Permits

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518.10 Taxes

518.11 Regulations

518.99 Penalty

Cross-reference:

Issuance of Temporary Right-of-way Occupancy for Outdoor Patios , CO ch. 513

§ 518.01 Definitions

When used in this chapter, the following words shall have the following meanings:

- (a) “Director” means the Director of **Mayor’s Office of Capital Projects** or his or her designee.
- (c) “Permit” means a public occupancy parklet permit authorized by Section 518.02 of the Codified Ordinances.
- (d) “Permittee” means the person or entity who sponsors the Parklet permitted to occupy an area of the public right-of-way.
- (e) “Right-of-way” means any street with permanent curb-side parking designated for public use and held by the City.
- (f) “Unobstructed Walk” means a clear, continuous paved surface free of tree grates, elevator grates and all vertical obstructions.
- (g) “Bump-Out” means an extension of the sidewalk into a typical street parking lane or driving lane.
- (h) “Parklet” means the area, within an existing curb lane where street parking is always allowed, where the permittee may utilize for dining and/or beverage consumption or bicycle parking.
- (i) “Community Development Corporation” (CDC) means a 501c3 non-profit organization that serves the neighborhood by supporting and performing placemaking activities to improve residential, commercial and greenspace properties and delivering economic opportunity programming to ensure city residents can thrive where they live.

§ 518.02 Public Occupancy Parklet Permits

Notwithstanding any codified ordinance to the contrary, the Director of **Mayor’s Office of Capital Projects** is hereby authorized to issue temporary public right-of-way occupancy permits revocable at the will of the Council authorizing the placement of parklets at permitted locations on streets, subject to the provisions of this chapter. A separate encroachment permit for such parklet shall not be required. No entity may occupy or perform work on any portion of the public right-of-way within the City of Cleveland without approval and required permits from the City of Cleveland.

No owner or operator of a Community Development Corporation (CDC) shall occupy any portion of a public street with a parklet without first obtaining a permit in accordance with this

chapter. Any CDC occupying any portion of a public right-of-way without a permit as required by this chapter shall be subject to the fines and penalties set forth in Sections [518.09](#) and [518.99](#) of this chapter.

§ 518.03 Application for Permits

Application for a permit shall be made to the Director in a form deemed appropriate by him or her. Such application shall include, but not be limited to, the following information:

- (a) Name, phone number and address of the applicant;
- (b) Name and address of the Permittee seeking the temporary occupancy permit;
- (c) A description of the proposed area, with photographs, to be occupied by the **Community Development Corporation (CDC)** and the hours and days of operation;
- (d) Detailed plans drawn to scale showing the locations, number and arrangement of tables, chairs, and other amenities or structures, the location of the vehicular barrier planned to demarcate the occupied area, and the nature and location of any existing sidewalk obstructions;
- (e) A description of the tables, chairs, vehicular barrier, pedestrian diverters, and other structures, including information about the composition;
- (f) Letter of approval from the business(es) in which the parklet(s) will front.
- (g)
- (h)
- (i) **Prior to being issued a POPs permit, permittee shall submit a maintenance bond in the amount of the \$10,000. The Director of the Mayor's Office of Capital Projects may draw from this maintenance bond, if the permittee goes out of business and does not remove and restore the right of way to the condition as it was prior to placement of the equipment, fencing, appurtenances, etc within the right of way, to restore the right of way to its previous condition and remove any items from the right of way pertaining to this permit. This maintenance bond will give the City of Cleveland the right to draw from it as necessary based on the situation indicated previously; and**
- (j) A signed statement that the permittee shall hold harmless the City of Cleveland, its officers and employees and shall indemnify the City of Cleveland, its officers and employees for any claims or damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee and the City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage in an amount of not less than One Million Dollars (\$1,000,000.00) on account of an accident involving injuries, including death, to one (1) or more persons and property damage insurance in an amount of not less than One Million Dollars (\$1,000,000.00), or a combined single limit of One Million Dollars (\$1,000,000.00) provided however, that this insurance requirement shall not be construed to limit permittee's indemnification obligations to the above-required limits of insurance. Such insurance shall also include the City of Cleveland, its officers and employees, as additional insured.

Commented [RK1]: For CDC controlled parklet, do we need a bond for possible removal?

§ 518.04 Permit Fee, Issuance and Duration

- (a) **Upon approval of the application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control in order to recover the City's costs related to the temporary right-of-way occupancy for a parklet permit and the associated inspection costs.**

(b) Approvals of the Director of Public Health, the Director of Public Safety, the Director of Public Works, the Director of City Planning and the Director of Mayor's Office of Capital Projects are required. If the applicant is proposing to build a structure (i.e. a raised platform), then approval from the Chief Building Official is required.

Once the required approvals have been made, and in compliance with the Council notification provision described below, the Director of Mayor's Office of Capital Projects shall issue a permit under this chapter. Denial of a permit may be appealed to the Board of Sidewalk Appeals. Upon approval, the Chief Building Official shall be notified of the number of tables that have been approved based on the permit application sketch.

(c) No permit shall be issued until the members of Council of the wards affected have been provided with written notice by the Director of Mayor's Office of Capital Projects and until the expiration of thirty (30) days from the date of the notice, unless the period of thirty (30) days is expressly waived by the Council members in writing. The processing of a complete application shall not take more than ninety (90) days and in the event the application is not processed within ninety (90) days, the applicant shall be entitled to a refund of the permit fee.

(d) Permits shall be valid for a twelve (12) month period, commencing April 1st and ending March 31st. Permits may be renewed, on a form provided by the Director, for the following season provided all the requirements of this chapter are met, and no changes have been made from the previous approved application. Upon approval of the renewal application, applicant shall pay a non-refundable fee in accordance with a fee schedule fixed from time to time by the Board of Control in order to recover the City's costs related to the renewal of the temporary occupancy for parklet permit and the associated inspection costs. If there are changes to the application, a new application must be made under this application and the appropriate permit fee shall be submitted at time of approval.

§ 518.05 Permitted Locations

The Director, consistent with the provisions of this chapter and the zoning code, shall establish rules and regulations as the Director deems proper with respect to permitted locations for the operation of parklets. The Director shall consider the operation and location of the parklet, the maintenance of the business establishment requesting a permit, the proximity and location of emergency exits, fire standpipes, fire hydrants, driveways, handicap ramps, handicapped parking zones, commercial loading and unloading zones, the condition of the sidewalk, and other factors he or she deems relevant. The Director may modify the rules and regulations as he or she deems necessary.

The issuance of permits and the maintenance of tables, chairs, and other structures shall be subject to the rules and regulations established by the Director, the zoning code and the following conditions and restrictions:

(b) Parklets under Section 518 shall be handicap accessible. ;

(c) Parklets shall not be permitted within six (6) feet of any fire hydrant, within five (5) feet of any driveway, within three (3) feet of any sidewalk handicap ramp. Parklets on the street shall not be permitted within any areas designated for handicapped parking, or where street parking is currently not allowed. Parklets may not be placed over utility access panels, manhole covers, or

storm drains unless approved by the City. Parklets may not be utilized on streets with a speed limit greater than 25 mph unless approved by the City. Parklets may not be utilized within fifty (50') feet of an intersection. The application must clearly show these items on the sketch submitted for review.

(e) The parklet areas must be maintained by the permitted entity. Each year, an annual inspection shall be performed by the City. Any maintenance issues found by the inspections must be completed within thirty (30) days, unless an extension is requested and approved or the permit may be revoked. If the entity that is permitted is no longer functioning at that location, the City may utilize the maintenance bond for maintenance and removal of all furniture, equipment, and other appurtenances.

§ 518.06 Permits

Permits shall held by the permitted entity.

Each permit shall contain the following information:

- (a) The name and address of the permittee;
- (b) A description of the permitted location;
- (c) A description of the tables, chairs and other structures;

(e) The expiration date of the permit; and

(f) Any other information the Director deems desirable.

§ 518.07 Requirements and Conditions of Permit

(a) Permittees and their agents shall comply with all of the requirements of this chapter and any applicable state law, while engaged in business at permitted locations.

(b) The parklet shall be placed only on the location set forth in the permit.

(c) A parklet located in the Central Business District shall not operate earlier than 6:00 a.m. nor later than 12:00 midnight. A parklet located in any district other than the Central Business District shall not operate earlier than 6:00 a.m. nor later than 11:00 p.m.

(d) Permittees and their agents shall obey any order of a police officer or other emergency personnel to remove their tables, chairs and other structures from the public right-of-way if necessary to avoid congestion or obstruction in an emergency.

(f) Permittees and their agents shall be responsible for maintaining all parklet structures and associated equipment in good repair, free of corrosion and in a safe, sound and nonhazardous condition. These will be inspected each year. If maintenance requested by the City is not performed within thirty (30) days, the permit may be revoked by the Director of Mayor's Office of Capital Projects.

(g) Permittees and their agents shall be responsible for keeping the general area around the permitted location free of litter and shall provide a suitable container for the placement of paper, wrappers, and other similar items used by customers and others within the permitted area. Permittees and their agents shall maintain at least six (6) feet of unobstructed walk as required by the Director of Mayor's Office of Capital Projects, which shall be free of snow at all times, as required by Section 507.13.

(h) Permittees shall not cook food in the parklet .

(i) Permittees shall not place signs in the parklet , except under a permit issued by the City of Cleveland or as required by this ordinance. A sign stating hours of operation of the parklet , whether it is for public or customer use, and sponsor of the parklet. Graphic content shall not include commercial messages, slogans, telephone numbers, or other forms of advertising. The

City shall provide the design format of the sign to the applicant. The applicant is required to purchase the sign from a 3rd party vendor and install sign so that it is visible to the sidewalk and street. .

(j) No permit shall be transferable in any manner.

(k) A permit is valid only when used at the location designated in the permit.

(l) The placement of an appropriate barrier where parklet is located within the street shall be utilized to protect the parklet area from street traffic. Pre-fabricated parklets can be utilized. Shop drawings and other necessary info shall be submitted to the City with the application for approval. The City may create a list of pre-approved pre-fabricated parklet components.

(n)

(o) A parklet can only be established by a Community Development Corporation (CDC) under section 518. Use of the parklet area for anything more than seating and consumption of food and/or beverage or bicycle parking must be approved by the Director of Mayor's Office of Capital Projects.

(p) Any public usage outside of hours as stated by signage may be construed as trespassing per section 623. Violators may be prosecuted per section 623 as applicable.

(r) The parklet shall be designed for easy removal in case of an emergency. In the case of a medical, fire, utility, or police emergency situation, The City has the authority to remove the parklet immediately out of the area. The City is not obligated to give advance notification and the City will not be responsible for damages that are incurred from moving the parklet in an emergency situation.

(s) When any public agency, or any private utility company or corporation must make repairs to any utilities located in, over, across, under or through the occupied premises, the applicant shall remove the parklet from the premise within thirty (30) days or as needed, upon notification by phone, in writing, or in person. Upon completion of any repairs, the parklet may be reinstalled by the applicant. Failure by the applicant to remove the parklet as requested may result in the City and/or authorized company removing the parklet at the applicant's expense.

(t) The parklet may not be multiple levels. Loose particles, such as sand or loose stone, cannot be utilized within a parklet.

(u) If utilizing a platform within a parklet area: Any opening between the sidewalk and the deck surface of the parklet shall be flush without a horizontal or vertical separation greater than one-half (1/2") inch – use of thresholds are encouraged. The platform shall no impede the flow of curbside drainage. Pedestrians should have the ability to see inside a parklet from the sidewalk. Overhead elements that span the sidewalk, travel lane of the road, or connect the parklet to the adjacent building are prohibited. Lighting of the parklet is required if use hours are beyond dusk. All lighting must self-powered (i.e. solar powered, battery powered,etc.) – no electrical connections to a building or other sources are allowed. Reflective material on the exterior of the parklet is required. Steps, lifts, and stairs are prohibited on a parklet.

§ 518.08 Permit Suspension and Revocation

(a) The Director may suspend or revoke the permit of any permittee if the permittee or his or her agent fails to abide by the provisions of these Codified Ordinances or state law, or if any required health license has been suspended or revoked.

(b) The Director shall give written notice of suspension or revocation of the permit to the permittee or his or her agent stating the reasons therefor. If the reason for the suspension or revocation is that a required health license has been suspended or revoked or that the permittee does not currently have an effective insurance policy as required by division (j) of Section 518.03, the action shall be effective upon giving such notice to the permittee or to his or her agent. Otherwise, such notice shall contain the further provision that the action shall become final and effective ten (10) days thereafter unless, within five (5) days of receipt of notice, the permittee requests a hearing before the Director. The Director shall forthwith hold the requested hearing, at which time the permittee shall be afforded the opportunity to give his or her version of the facts which gave rise to the Director's action. After the hearing the Director shall determine whether to proceed with the action or to rescind it.

(c) The action of the Director may be appealed to the Board of Sidewalk Appeals.

(d) If the current permit holder suspends operations permanently, their permit shall be automatically revoked and all tables, chairs, and other associated equipment placed in the public right-of-way must be removed immediately or it may be seized and removed by the City and billed to the permit holder. The permit holder must restore the right of way to its original condition or be in compliance with City standards and specifications as required by the Director.

§ 518.09 Removal of Tables, Chairs and Other Associated Equipment

Any tables, chairs and other associated equipment placed in a public sidewalk, court, alley, street or other public right-of-way without a permit issued pursuant to this section may be seized and removed. Prior to such seizure and removal, the permit holder shall be notified and given two (2) days in which to remedy the violation. If the permit holder fails to remedy the violation, the City may seize and remove the tables and chairs and other associated equipment.

Notwithstanding any other provisions of this chapter, the City may seize any tables and chairs and other associated equipment, whether placed with or without a permit, without prior notice if the tables and chairs and other associated equipment are placed in the public right-of-way in such a place or manner as to pose an immediate and serious danger to persons or property or if the condition of the tables, chairs, and associated equipment renders them unsafe, unsound or hazardous so as to pose an immediate and serious danger to persons or property. After seizure, the City shall promptly notify the permit holder and such individual shall have the right to request an informal hearing before the Director within ten (10) days after such notification to determine whether the seizure was proper.

As a condition of recovering any tables and chairs and other associated equipment properly seized pursuant to this section, the owner of such tables and chairs and other associated equipment shall pay an impound fee covering the actual cost to the City of transporting and storing such tables and chairs and other associated equipment.

§ 518.10 Taxes

The Permittee shall be responsible for all charges and all federal, state or local taxes, including property taxes, which may now or hereafter be imposed or levied upon the permit holder and the services provided in connection therewith.

§ 518.11 Regulations

The Director may promulgate such regulations, not inconsistent with the provisions of this chapter, establishing procedures for the issuance of permits.

§ 518.99 Penalty

- (a) Whoever violates any provision of this chapter shall be guilty of a misdemeanor of the third degree. Each day during which noncompliance or a violation continues shall constitute a separate offense. A fine of \$100 per day may be assessed to the permit holder, utilizing business, or the property owner.
- (b) Any violation of 518.05(e) can result in a fine of \$500.00. Any fees associated with the City removal of equipment, fencing, and other appurtenances can be levied onto the property tax of the associated property in question.



City of Cleveland **Memorandum**
Justin M. Bibb, Mayor

Date: May 9, 2023

To: Mark D. Griffin, Director
Department of Law

From: James D. DeRosa, Director
Mayor's Office of Capital Projects *JDC*

Subject: Legislation to Amend Codified Ord. 513, 241.21(a), and creation of Ordinance 518 Related to Patio and Parklet permits within the Right-of-Way

Please prepare legislation to amend Codified Ordinances 513, 241.21(a), and creation of Ordinance 518 which authorized the Departments of MOCAP to issue permits concerning outdoor patios and parklets within the City of Cleveland Right-Of-Way.

MOCAP proposes changes to include parklets for business establishments and CDCs, along with changing some language to enhance the regulations and penalties for such work. Attached are the summary of the proposed changes.

JD/rk

cc: Ryan Puente, Deputy Chief of Staff + Chief Government Affairs Officer
Bradford J. Davy, Chief of Staff
Bonita G. Teeuwen, Chief Operating Officer
Richard Switalski, Administration Bureau Manager, Div. of Eng. & Const.
Meredith Carey, Legislative Liaison, MOCAP
Nancy Lanzola, Legislative Liaison, Department of Law
Beverly Gray, Legislative Liaison, Department of Law