



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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**File #:** BL2023-1689, **Version:** 1

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An ordinance creating a permit program for parklets and streateries in Davidson County and establishing a fee structure for such licenses; by amending chapter 13.32 by adding to it a new section to be designated section 13.32.166 of the Metropolitan Code of Nashville and Davidson County.

WHEREAS, in order to assist restaurants in compliance with COVID-19 regulations and to expand outdoor dining options, the Council adopted Second Substitute Ordinance No. BL2020-403 on September 15, 2020, and extended its expiration date by resolution RS2022-1306, on January 2, 2022; and,

WHEREAS, parklets and streateries help to activate and improve the public realm, by allowing greater opportunities for people to socialize and interact with others and to activate the streetscape, leading to decreases in crime and an enhanced sense of public safety; and,

WHEREAS, restaurateurs and bar owners have successfully implemented sidewalk cafes in Metropolitan Nashville and Davidson County in recent years, and the desire exists to extend, in the appropriate situations and locations, sidewalk cafes into an adjacent parking space(s) (known as "streateries"); and,

WHEREAS, parklets and streateries have been used in many cities of all sizes throughout North America and are proven methods to increase the vibrancy and activity of a streetscape; and,

WHEREAS, Council intends to establish a licensing program for parklets and streateries in order to build on the successful pilot programs of the past years in Nashville and Davidson County and improve the quality of life in Nashville and Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Chapter 13.32 of the Metropolitan Code is amended by adding a new section thereto, immediately following section 165 thereof, as follows:

### 13.32.166 - Parklet and Streatery

#### A. Definitions:

1. "Parklet" means a small public gathering space, occupying up to two parking stalls or a loading zone, as applicable, on the public street, and treated in all respects as a public sidewalk, but the facilities of which are privately owned and maintained.
2. "Streatery" means up to two parking stalls or a loading zone, as applicable, used either as an extension of, or a stand-alone sidewalk café, connected visually to, and for use by patrons of, a nearby restaurant or bar and service at which is subject to all terms and conditions of the nearby restaurant or bar's food service permits and alcohol licenses.

B. Parklet/streatery facilities are authorized to be located within the area of the public right-of-way (ROW) occupied by parking spaces, and unloading/loading zones, subject to Metro Code Title 12 and related regulations. Revisions in said regulations shall require the approval of the director of the

Nashville Department of Transportation and Multimodal Infrastructure (“NDOT”) and the approval of the Metropolitan Council by resolution.

- C. Any person who maintains and/or operates any parklets or streatory facility withing the public right-of-way without obtaining a permit from the metropolitan government shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subjected to a fine not to exceed the amount specified in Section 1.01.030 of the Metropolitan Code, and each day that such violation continues to occur shall be deemed a separate offense.
- D. Any person making application for a permit to operate a parklet/streatery facility, which are available with one-year terms, shall, in addition to filing the appropriate application as required by NDOT, pay to the metropolitan government a nonrefundable fee of one hundred and fifty dollars to cover the cost of processing such application. With regard to a streatory, the permittee shall also pay an additional annual fee per based on the lost revenue from the metered parking spaces occupied by the streatory, or a lower rate, per non-metered parking space occupied thereby, as determined by NDOT. If a renewal of the permit is desired, an application for renewal must be made at least thirty (30) days prior to the expiration of the existing permit and must be accompanied by the non-refundable fee of one hundred and fifty dollars as well as, if applicable, the annual fee per metered and non-metered spaces occupied by the right-of-way use.
- E. Rules and Regulations.
1. Site Plan. All applicants shall provide a plan with their application form that clearly includes and indicates all the following information:
    - a. The footprint of the proposed parklet/streatery, including sufficient detailed information to illustrate the design elements on either end of the proposed parklet/streatery.
    - b. All property lines, right-of-way lines, sidewalk width, parklet/streatery length and width, existing parking stalls, and all surface obstructions within 15 feet of the occupied area (e.g., fire hydrants, streetlights, parking meters, street trees, utility access covers).
    - c. The number(s) on all parking meters that are to be removed must also be included in all drawings. These numbers are generally posted on the meter.
    - d. Provide as much detail as possible to aid in Metro’s review of the application.
  2. Parklet/Streatery Programming. Indicate what type of elements the applicant is proposing on the parklet/streatery (e.g., tables and chairs, benches, landscaping, bike parking, etc.) and provide a maintenance plan for the parklet/streatery. This should include information such as whether the elements will be removed from the public right of way each day, seasonal management, and management during inclement weather.
  3. Support. A letter from fronting property owners is required. Each applicant must adequately and robustly involve the surrounding community in the development of the proposal by involving neighbors and tenants of the subject property, and any existing merchant or neighborhood groups. The applicant must provide reliable and verifiable documentation of this support in the form of letters, petitions, emails, etc.
  4. Indemnity and Hold Harmless Statement. Each applicant shall provide a signed agreement to defend, indemnify, save, and hold harmless the city and all its officer, agents, or employees from any liability for damages resulting from any and all operations under the permit in a form approved by

the Metropolitan Attorney. Proof of insurance, in an amount of not less than \$1,000,000, in a form acceptable to the metropolitan government, from a company licensed to do business in the State of Tennessee, must be furnished with the application.

5. Departmental Review. An interdepartmental committee (Planning, Department of Transportation and Multimodal Infrastructure (NDOT), Beer Board, Water, Police, Fire) will review applications, on a first-come-first-served basis, to ensure that the concept application meets program criteria.
6. Compliance with Laws and Insurance. The sale and consumption of beer and other alcoholic beverages at streatery facilities is permitted if the requirements of all pertinent laws, rules and regulations for the sale and consumption of beer and/or alcoholic beverages have been met prior to the filing of any application sought pursuant to these regulations. If beer and other alcoholic beverages are served at the streatery, the applicant must provide proof of liquor liability insurance in an amount of not less than \$1,000,000, in a form acceptable to the metropolitan government, from a company licensed to do business in the state of Tennessee. Furthermore, in the case of a streatery, where the applicant is a restaurant or bar who intends to serve food in the streatery area, all state and local health laws and regulations for food service shall be applicable to the area of the streatery, too.
7. Permit Application. For those applicants with an accepted conceptual application; the next step is to submit a construction permit application and fully detailed site plan, including but not limited to items such as cross sections, elevations, structural details, safety treatments, existing utilities, and maintenance of traffic plans. Metro staff will work with the applicant in a collaborative fashion during this period to ensure that the parklet/streatery design is appropriate and that the final drawings produced meet requirements.
8. Construction Permit Approval. Within 5 business days from submittal of a final plan, if it is determined by the NDOT that the application satisfies all policy requirements and the applicant has paid all necessary fees, NDOT will grant final approval and issue a permit, taking into consideration the recommendation of the interdepartmental committee.
9. Construct Parklet/Streatery: Upon permit issuance and as a condition of permit approval, applicants are required to meet with NDOT no less than ten (10) days before beginning any site work. Installation of the parklet must be completed within two weeks of permit issuance.
10. Other Permits: In conjunction with the parklet/streatery right-of-way permit, the applicant is required to obtain any other applicable permits that may be required by other agencies.
11. Parklet/Streatery Removal:
  - a. The permittee, at the permittee's sole cost, shall be responsible for removal of the parklet/streatery and restoring the right of way to its original condition upon the occurrence of one or more of the following events:
    - i. the cessation of use,
    - ii. failure to comply with permit conditions or other legal requirements, or
    - iii. the parklet/streatery poses a dangerous condition or threat to life or property.
  - b. Metro may remove the parklet for any of the following reasons:

- i. Failure to maintain the parklet,
  - ii. Violation of policies and regulations adopted for this program by NDOT,
  - iii. Violation of the permit,
  - iv. Modifications not previously approved by Metro,
  - v. When the parklet/streatery encroachment causes a dangerous condition or threat of danger to life or property as determined by the Director of NDOT. This includes but is not limited to, where:
    - A. The parklet/streatery is encroaching into a travel lane or bike lane;
    - B. The parklet/streatery has lost structural integrity;
    - C. a gap develops between the parklet/streatery and sidewalk; or
    - D. The parklet/streatery creates visibility issues.
  - vi. As a condition of permit issuance, the parklet/streatery permittee shall agree in writing, in a form approved by the Metropolitan Department of Law, to authorize Metro to remove the parklet/streatery at the permittee's sole cost in the event that any of the occurrence of any of the circumstances for removal herein.
  - vii. If any of the above violations occur, the applicant will be sent notice of the violations and, except in the case of dangerous or threatening conditions, will be given a maximum of five (5) working days to remedy the condition or remove the parklet/streatery. If the permittee fails to timely or adequately maintain or repair the encroachment or remove the encroachment within the five (5) working days, the permit will be terminated. Once the permit is terminated, the parklet/streatery must be removed at the sole cost of the permittee within three (3) calendar days. When the encroachment causes a dangerous condition or threat of danger to life or property, the permit will be terminated without the five (5) day notice and removed immediately at permittee's cost.
  - c. Metro, at its sole discretion, may remove the parklet/streatery and restore the public right-of-way to its previous condition upon a finding that it is in the public interest for Metro to fund or partially fund removal of the parklet/streatery.
12. Transfer of Permits. If the permittee sells its business interests, one of the following must be done:
- a. Removal of the parklet/streatery; or
  - b. Upon the approval of Metro, a new permit in the purchaser's name may be issued. The new permittee must comply with all other requirements for the issuance of a permit.
13. Program Changes. Metro reserves the right to amend the Parklet/Streatery Program and all terms contained within it up until the point that a final permit is issued. Applicants may withdraw their application if they do not agree with any of the policy changes.

Section 2: That this ordinance shall take effect from and after its final passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

### Analysis

This ordinance creates a permit program and fee structure for parklets and streateries in Davidson County.

A "parklet" is defined as "a small public gathering space, occupying up to two parking stalls or a loading zone,

as applicable, on the public street, and treated in all respects as a public sidewalk, but the facilities of which are privately owned and maintained.” A “streatery” is defined as “up to two parking stalls or a loading zone, as applicable, used either as an extension of, or a stand-alone sidewalk café, connected visually to, and for use by patrons of, a nearby restaurant or bar and service at which is subject to all terms and conditions of the nearby restaurant or bar’s food service permits and alcohol licenses.”

The Nashville Department of Transportation and Multimodal Infrastructure (“NDOT”) will create an application for an annual permit for parklets and streateries. This application must include a nonrefundable fee of \$150 to cover the cost of processing the application. A streatery must also pay an annual fee based on the lost revenue from the metered or nonmetered parking spaces occupied by the streatery.

The application must include information like a site plan, a maintenance plan, documentation of community support, and proof of insurance of not less than \$1,000,000 and an agreement to hold the Metropolitan Government harmless from any liability resulting from operations under the permit.

After the initial application is submitted, a construction permit application and fully detailed site plan must be submitted. Within five days of the submission of a final plan and satisfaction of all requirements, NDOT will issue final approval and a permit for the parklet or streatery. Applicants must meet with NDOT no less than ten days before commencing construction of the parklet or streatery.

The ordinance provides circumstances where a parklet or streatery must be removed, including failure to maintain the parklet or streatery, violation of policies and regulations, violations of the permit, modifications not previously approved by NDOT, and when the parklet or streatery causes a dangerous condition or threat of danger to life or property. Metro would be able to remove the parklet or streatery at the sole cost of the permittee. Metro would also be able to fund the removal if it determines funding or partially funding removal to be in the public interest.

*Fiscal Note: Metro would receive an annual fee of \$150 for each application for a parklet or streatery to fund the cost of processing the application. Metro would also receive an annual fee from streateries to cover the lost revenue due to the use of parking spaces owned by Metro. This fee would be based on whether the parking space is metered or non-metered.*