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## Letter to Mayor and City Council on private “parklets” in the public streets and public rights of way

1 message

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**Molly Erickson** <erickson@stamplaw.us>  
Reply-To: Molly Erickson <erickson@stamplaw.us>  
To: "cityclerk@ci.carmel.ca.us" <cityclerk@ci.carmel.ca.us>

Mon, Mar 1, 2021 at 2:00 PM

Dear Clerk:

Please provide the attached letter promptly to the Mayor and City Council. Thank you.

Regards,

Molly Erickson  
**STAMP | ERICKSON**  
tel: 831-373-1214

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You received this message because you are subscribed to the Google Groups "Community Activities" group.  
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March 1, 2021

Dave Potter, Mayor  
Members of the City Council  
City Hall  
Carmel-by-the-Sea, CA 93921

*The City of Carmel-by-the-Sea is hereby determined to be primarily, essentially and predominantly a residential city wherein business and commerce have in the past, are now, and are proposed to be in the future, subordinated to its residential character...*

Ordinance No. 96, 1929

Subject: Private "parklets" in the public streets and public rights of way

Dear Mayor Potter and Members of the City Council,

This law firm represents numerous Carmel-by-the-Sea residents who are voters and property owners. These individuals are concerned that the "temporary" parklets, as well as discussions by the Outdoor Dining Ad Hoc Committee to permanently sanction dining on public property, violate the standards and traditions of Carmel-by-the-Sea. Our clients believe that the so-called parklets, inclusive of alcoholic beverages sold and consumed on public property, are contrary to 104 years of community practices and the community's heritage. In addition, the parklets are in violation of State law, the City's adopted Local Coastal Plan (LCP) and General Plan, the Encroachment Ordinance and other adopted codes that each of you took an oath to uphold, preserve and protect upon assumption of your public office.

Our clients understand and empathize with the difficulties the Covid virus has brought to local commerce. They were willing to remain silent as long-standing plans and codes were temporarily shunted aside. However, recent public notices for meetings of the Mayor's Ad Hoc Committee (February 8, February 16) have used the word "permanent" to describe actions contemplated for parklets on Carmel's streets and sidewalks. Our clients will no longer remain silent. They believe that a majority of the city's residents do not support private, permanent commercial parklets on public property. The City's adopted plans and codes do not support the private usage of city lands for any commercial activity. The City should not allow private restaurant activities on public property while at the same time denying other private retail uses similar accommodation.

The term "parklets" is a misnomer. A more accurate term is "restaurantlets" because that is what they are: private restaurant uses on public property. They provide an unauthorized public subsidy to a few select business owners. My clients emphasize that the proposed approach to make them permanent would be a mistake.

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### THE PARKLETS ARE INCONSISTENT WITH THE CITY'S ADOPTED PLANS AND CODES

Government Code section 65860 mandates that the City's zoning be consistent with the adopted General Plan. The City's adopted General Plan references this section. Yet the City has approved the parklets in violation of this cardinal tenet of State law and of Carmel's plan that had been enforced over decades by your predecessors.

The proposed parklets are inconsistent with the plans and codes in several material ways, including the following policies and sections that are material to the issue, which we provide for your convenient reference. The scope of the issues implicated by parklets includes public streets and rights of way, parking, encroachments, public health and safety, and favoritism of some businesses over others leading to unequal treatment between businesses located in the commercial area, many of which have suffered from the impacts of Covid-19 and of parklets.

This letter identifies fundamental mandatory General Plan and LCP policies and Municipal Code sections that the parklets violate.

### Carmel-by-the-Sea Local Coastal Plan/General Plan

The adopted General Plan states that "The Carmel General Plan has been combined with the Local Coastal Plan (LCP) to ensure the coordination of these two policy documents." Thus, references herein to the General Plan are also to the LCP.

Policy 1-15: "Require that all retail uses shall be conducted within a fixed place of business within the City."

Policy 1-20: "Encourage outdoor eating areas that are in character with the design of the commercial district, (and) do not. .. result in a net increase in the (a)mount of restaurant seating."

Objective 1-2: "Limit Commercial Activity, both as to its scope and physical land spread within the present commercial and multifamily districts."

Policy 1-14: "Discourage evening commercial activity..."

My clients observe that references in the General Plan regarding encouragement of outdoor dining are applicable only to private property, rather than to public properties, because plan policies and code sections prohibit dining in public rights-of-way.

Policy 2-36: "The parking program shall ensure that the city maintains adequate, convenient parking for residents and visitors alike."

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Policy 2-40: "Explore removal of some on-street parking on some narrow and residential streets concurrent with the addition of new off-street parking..."

Policy 4-67: "Require that all retail uses be conducted within a fixed place of business within the City. Prohibit exterior retail sales..."

LCP app. F: "The Planning Commission shall review the design and siting of furniture in the public way." (*Id.* at ¶ (D).) No parklet has received Planning Commission review to our clients' knowledge.

### Carmel-by-the-Sea Municipal Code

#### Title 12, Encroachments:

§12.08.010: "[I]t is the policy of this City to discourage encroachments onto public lands and that such encroachments shall be kept to a minimum and shall be permitted only when consistent with the General Plan..."

#### §12.08.020, Definitions:

- (D) "Temporary encroachment" means any encroachment which remains on City-owned property or on the right-of-way for 90 days or less.
- (E) "Permanent encroachment" means any encroachment which remains on City-owned property or in the right-of-way more than 90 days.

#### §12.08.060(D) Circulation and Parking:

"The proposed encroachment shall not adversely affect vehicular and/or pedestrian traffic nor the parking of vehicles."

#### §12.32.160 Conduct on Public Property:

"It is unlawful to picnic, camp, place tables, place chairs on any public right-of-way, sidewalk area or in any parking area."

and

"This prohibition shall...apply to eating when the eating is the primary activity."

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§12.12.010 Obstruction of streets and sidewalks:

"It is unlawful to leave or cause to be left, any goods, wares, merchandise, merchandise container, refuse or waste container, building materials or equipment or other articles upon any sidewalk or sidewalk area within the City except under the following conditions..." Three conditions are listed, none of which applies to private tables, private chairs or private outdoor dining furnishings.

Title 17, Zoning Code:

§17.02.050(B):

- (2) "It shall be unlawful for any yard, open space or land to be used for any purpose or in any way not specifically permitted by this title."  
Note: the Zoning Code does not permit the usage of public property (streets, sidewalks) for dining, as explained in this letter.

§17.14.220(D) Design Regulations for Exterior Seating Associated with a Restaurant:

- (3) "The area in which seating is proposed shall be fully contained on private property and shall not interfere with automobile or pedestrian traffic on any right-of-way."
- (6) "Physical structures that enhance comfort such as windscreens, heaters and exterior lighting shall be shielded from view from the public right-of-way." This reference makes it evident that all outside dining will be on private property, rather than on public lands, streets, sidewalks or rights-of-way.

§17.56.010(J) PURPOSE: "limit the space occupied by businesses that generate high traffic and/or parking demands."

Section 9.20, Public Peace, Morals and Welfare:

§9.20.010(B): "Public Place means any public street, right-of-way, alley..."

§9.20.020: "It is unlawful for any person to drink any alcoholic beverage in or upon any public place, as defined in this chapter."

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### PROBLEMS

The city authorized the parklets under the Temporary Use Permit section of the Municipal Code. Their continued existence has surpassed the 90-day threshold for temporary authorization. The continuation of the parklets certainly no longer meets the encroachment "Emergency" clause in the Municipal Code (§ 12.08.080,H). To my clients' knowledge, the City Council has taken no action since March 2020 to reaffirm an emergency. Holding meetings about design standards for the parklets or whether outdoor dining should be continued (Council meeting, December 2020) does not satisfy the language or the intent of the code or the applicable laws regarding emergencies.

Consumption of alcoholic beverages on public property is out of hand. Residents have reported observing drinking in the Ocean Avenue medians, at Monte Verde/Ocean Avenue, at Ocean Avenue/Lincoln, at Ocean Avenue/Dolores, at Piccadilly Park, all prohibited by Municipal Code section 9.20.020. Each incident of drinking beyond the confines of the parklets violates the liquor licenses of the establishments providing the beverages. The City should enforce its ordinances and seek the assistance of officers of the Alcoholic Beverage Commission.

For over a century, Carmel-by-the-Sea debated its parking problem. The records of past councils are filled with such discussions, as are the press clippings from those decades. With little regard for non-restaurant businesses and resident customers of retail shops, the City in 2020 deemed it acceptable to reduce parking without providing any new spaces, a definitive violation of General Plan Policy 2-40 and its adopted codes. Such an extraordinary action on an emergency basis is one thing; transforming the emergency accommodation into a permanent situation is entirely different.

If the Ad Hoc Committee and the City Council want to change our existing plans and codes, if the Committee and Council want to radically alter the historic pre-Covid streetscapes of Carmel-by-the-Sea, there is a defined process for undertaking such action. It is via a General Plan amendment, with subsequent alterations to the Local Coastal Plan and the City's codes. Such a process involves public meetings to generate the content for goal/policy/objective amendments, drafting of the texts, environmental analysis with the required noticing, planning commission review and action, city council approval, and the California Coastal Commission sanction of an amended LCP. A review of the General Plan and the City's codes in an orderly manner and with public discourse takes time. The process may lead to political disagreements. Such a process may be inconvenient. The process can be costly. The process may exceed your terms in office. The process is required under the law. The process should actively involve the community.

My clients are unhappy with the actions of the city to date. To proceed with the actions currently being discussed by the Ad Hoc Committee would be deeply unwise and likely would lead to controversy that would long outlast the current Covid-19 pandemic. My clients urge you to stop pursuing the permanency of parklets as

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suggested in recent Ad Hoc Committee discussions. My clients are considering their options in the event that the City chooses to continue down that path toward permanency.

My clients’ position is that until such time as the residents can physically attend meetings for consideration of amending the General Plan to accommodate parklets – permanent encroachments on public property that would significantly alter the physical environment of this city – the Ad Hoc Committee should be disbanded.

A simple answer for resolving the non-compliance issues is to establish a deadline for the removal of the parklets and return to the Carmel-by-the-Sea streetscapes which existed for the century up until March 2020. An alternative is to commence the General Plan amendment process. During the pendency of that process, the streetscapes should be returned to normal as promptly as possible when restaurants are allowed to resume indoor dining. My clients urge the City to return the parking spaces to the residents and visitors who want to patronize all the businesses in Carmel, in addition to restaurants.

#### REQUEST

I ask for the courtesy of a written response to the concerns expressed in this transmittal, as well as an indication of the City's intentions with regard to parklets, by Friday, March 12, 2021.

Please put me on the distribution list of all notices and actions for this matter, including all notices under Public Resources Code section 21092.2, to my postal service address and my email address as shown on my letterhead.

Thank you.

Very truly yours,

STAMP | ERICKSON

/s/ Molly Erickson

Molly Erickson