

ORDINANCE NO. \_\_\_\_\_-2023

AN ORDINANCE REGULATING THE USE OF RIGHTS-OF-WAYS FOR PARKLETS AND ESTABLISHING A FEE FOR THE PERMITTING OF SUCH USE WITHIN THE CORPORATE LIMITS OF THE CITY OF GARDEN CITY, KANSAS; AMENDING CURRENT CODE SECTIONS 42-475 AND 78-15; REPEALING CURRENT CODE SECTIONS 42-475 AND 78-15; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Garden City, Kansas:

**SECTION 1.** Section 42-475 of the Code of Ordinances for the City of Garden City, Kansas, is hereby amended, to read as follows:

**Section 42-475. Right-of-Way Permits for Parklets.**

(a) The fees required by Section 78-15 are as follows:

- (1) Permit fee.....\$200.00

**SECTION 2.** Section 78-15 of the Code of Ordinances for the City of Garden City, Kansas, is hereby amended, to read as follows:

**Section 78-15. Parklets.**

(a) **DEFINITIONS.** The following terms for purposes of this section shall be defined as follows:

- (1) *Crashworthy* – Successfully crash tested in accordance with a national standard such as the National Cooperative Highway Research Program Report 350, “Recommended Procedures for the Safety Performance Evaluation of Highway Features”.
- (2) *Designated Area* – The total area within the public right-of-way that is approved by a right-of-way permit issued pursuant to Subsection (d) to contain the parklet, as well as any road safety features, boundary markers, and other structures or objects required by this section.
- (3) *Garbage* – Any “garbage” as such term is defined by Section 38-133(f), and amendments thereto.
- (4) *Parklet* – Any structure that is owned by a private person, is intended to be placed within a public right-of-way, and is intended to be used for a private commercial purpose that is not otherwise authorized by this Code.
- (5) *Person* – Any natural person, corporation, company, association, firm, partnership, business trust, estate, joint venture, cooperative, or any legal or commercial entity.
- (6) *Public Right-of-Way* – Any area of real property that the City is authorized to use or occupy for street or sidewalk purposes, regardless of the manner in which such authority was acquired and regardless of whether such area is actually used for pedestrian or vehicular travel by the public. This term shall include, but not be limited to, the curb and gutter of any street and the verge and buffer between any street and sidewalk.

- (7) *Smoking* – Any “smoking or smoke” as such term is defined by Section 62-2(1.1)(b)(4)(P), and amendments thereto.
- (8) *Street* – Any “street or highway” as such term is defined by Section 86-2(1), and amendments thereto.
- (9) *Trash* – Any “trash” as such term is defined by Section 38-133(m), and amendments thereto.

(b) **VIOLATIONS.**

- (1) **PERMIT REQUIRED.** No person shall place a parklet within any public right-of-way without:
  - (A) Obtaining a valid right-of-way permit pursuant to Subsection (d); and
  - (B) Entering into a right-of-way use agreement with the City pursuant to Subsection (d)(2)(D).
- (2) **VIOLATING PERMIT OR AGREEMENT.** No person shall violate any provision of this section or any term or condition of any permit or right-of-way use agreement issued or entered into pursuant to this section.
- (3) **PENALTY.** A person who is convicted of a violation of subsection (b)(1) or (b)(2) shall be sentenced to imprisonment not to exceed six (6) months or a fine of at least \$50.00, or sentenced to both such imprisonment and fine, but in no event shall the person be fined in excess of \$1,000.00.

(c) **DESIGN STANDARDS.** No permit shall be issued under this Section unless the parklet and its immediate environs conform to each of the following design standards:

- (1) **BUILDING CODE.** The parklet shall be constructed in accordance with the provisions of the Building Code, as adopted and incorporated by Section 18-20, including any provisions relating to accessibility. In the event of any conflict between a provision of the Building Code and this Section, this Section shall prevail and control. In addition thereto, the parklet shall be constructed in accordance with the design criteria set forth in Subsection (g).
- (2) **CODE COMPLIANCE.** A provision requiring that the applicant comply with all provisions of this Section and any applicable provisions of any ordinance, law, or regulation of any local, state, or federal government, or agency thereof, including, but not limited to, the Code and any federal statute, regulation, or guideline relating to the Americans with Disabilities Act or the Architectural Barriers Act, and amendments thereto.
- (3) **TEMPORARY CONSTRUCTION.** No parklet shall be drilled into or otherwise affixed to the real property or any street, curb, gutter, sidewalk, or public infrastructure within any public right-of-way.
- (4) **MOVEABILITY.** Each parklet shall be designed to be easily moveable and removable, without using specialized tools or equipment.
- (5) **ROAD SAFETY FEATURES.**
  - (A) **MAIN STREET LOCATIONS.** Unless otherwise approved by the Kansas Department of Transportation, any parklet to be placed within a public right-of-way located on Main Street shall be protected by barriers, as follows:

- (i) **STREET SIDE – BARRIERS.** On the side of the parklet that runs parallel to the street, the parklet shall be protected by barriers that are crashworthy and that form a line running parallel to the street for the entire length of the parklet. Each barrier shall be placed two feet (2') from the edge of the traffic lane or, in the event that a traffic lane is not designated, eleven feet (11') from the center of the street.
  - (ii) **TRAFFIC FLOW SIDE – BARRIERS.** On the side of the parklet that faces the flow of oncoming traffic, the parklet shall be protected by barriers that are crashworthy and that form a line running in a flared position to the flow of oncoming traffic for the entire width of the parklet.
- (B) **OFF-MAIN STREET LOCATIONS – ANGLED PARKING.** Any parklet to be placed within a public right-of-way having angled parking and not located on Main Street shall be protected by wheel stops and reflective delineator posts, as follows:
  - (i) **STREET SIDE – WHEEL STOPS.** On the side of the parklet that runs parallel to the street, the parklet shall be protected by wheel stops that are at least four feet (4') long and that are placed at least every four feet (4') in a straight line for the entire length of the parklet. For any parklet located on a one-way street, each wheel stop shall be placed eight feet (8') from the center of the street. For any parklet located on a two-way street, each wheel stop shall be placed thirteen feet (13') from the center of the street.
  - (ii) **TRAFFIC FLOW SIDE – WHEEL STOPS AND DELINEATOR POST.** On the side of the parklet that faces the flow of oncoming traffic, the parklet shall be protected by: (a) one (1) wheel stop that is at least four feet (4') long and that is placed in a flared position to the flow of oncoming traffic; and (b) one (1) reflective delineator post that is placed no greater than two feet (2') from the traffic flow side of the parklet and that is aligned with the straight line formed by the wheel stops along the street side of the parklet.
  - (ii) **NON-TRAFFIC FLOW SIDE – DELINEATOR POST.** On the side of the parklet that faces away from the flow of oncoming traffic, the parklet shall be protected by one (1) reflective delineator post that is placed no greater than two feet (2') from the non-traffic flow side of the parklet and that is aligned with the straight line formed by the wheel stops along the street side of the parklet.
- (C) **OFF-MAIN STREET LOCATIONS – PARALLEL PARKING.** Any parklet to be placed within a public right-of-way having parallel parking and not located on Main Street shall be protected by wheel stops and reflective delineator posts, as follows:
  - (i) **STREET SIDE – WHEEL STOPS.** On the side of the parklet that runs parallel to the street, the parklet shall be protected by wheel stops that are at least four feet (4') long and that are placed at least every four feet (4') in a straight line for the entire length of the parklet. For any parklet located on a one-way street, each wheel stop shall be placed seven (7') from the center of the street. For any parklet located on a two-way street, each wheel stop shall be placed twelve feet (12') from the center of the street.

- (ii) **TRAFFIC FLOW SIDE – WHEEL STOPS AND DELINEATOR POST.** On the side of the parklet that faces the flow of oncoming traffic, the parklet shall be protected by: (a) one (1) wheel stop that is at least six feet (6') long, is placed at least four feet (4') from the traffic flow side of the parklet, and that is placed in a perpendicular position to the street; and (b) one (1) reflective delineator post that is placed no greater than two feet (2') from the traffic flow side of the parklet and that is aligned with the straight line formed by the wheel stops along the street side of the parklet.
    - (ii) **NON-TRAFFIC FLOW SIDE – DELINEATOR POST.** On the side of the parklet that faces away from the flow of oncoming traffic, the parklet shall be protected by: (a) one (1) wheel stop that is at least six feet (6') long, is placed at least four feet (4') from the non-traffic flow side of the parklet, and is placed in a perpendicular position to the street; and (b) one (1) reflective delineator post that is placed no greater than two feet (2') from the non-traffic flow side of the parklet and that is aligned with the straight line formed by the wheel stops along the street side of the parklet.
  - (D) **CITY ENGINEER CONTROL.** The City Engineer shall have the authority to, at any time, require any barrier, wheel stop, or reflective delineator post to be repositioned and to require any additional or different barrier, wheel stop, reflective delineator post, or other road safety feature.
- (6) **EXTENSION OF LICENSED PREMISES.** In the event that the person owning the parklet desires to serve alcoholic liquor or cereal malt beverage to patrons using the parklet, the person shall comply with each of the following:
  - (A) **ON-PREMISES LICENSE REQUIRED.** The person shall be licensed for on-premises consumption of alcoholic liquor or cereal malt beverage by the Kansas Department of Revenue – Alcoholic Beverage Control and by the City and, in addition thereto;
  - (B) **DISTANCE LIMITATIONS.** The parklet shall be placed within thirty feet (30') in direction from any given point on the person's original licensed premises;
  - (C) **BOUNDARY MARKERS.** For the purposes of identifying to the public the boundary beyond which alcohol cannot be removed, the boundaries of the premises extending beyond the walls of the building shall be clearly marked by three-dimensional obstacles that are placed at least every five feet (5') and, where gaps exist between such obstacles, the boundary is clearly marked on the ground with a line of demarcation; and
  - (D) **COMPLY WITH LICENSE.** The person shall otherwise comply with any requirements of the Kansas Department of Revenue – Alcoholic Beverage Control and the City in relation to an extended premises.

(d) **PERMITS.**

(1) **ELIGIBILITY.**

- (A) **ZONING DISTRICT.** No permit shall be issued under this Section unless the parklet is to be placed within a public right-of-way that is located in the following zoning districts:
  - (i) C-3, Central Business District.

(B) **LOCATION.**

- (i) **PARKING STALLS.** No permit shall be issued under this Section unless the parklet is to be placed within a public right-of-way with angled parking stalls or parallel parking. For angled parking, the parklet shall not occupy more than three (3) parking spaces. For parallel parking, the parklet shall not occupy more than two (2) parking spaces. In any event, the designated area shall not exceed twenty-five feet (25').
- (ii) **USE OF ADJACENT, NEIGHBORING PROPERTY.** No permit shall be issued under this Section for a designated area that crosses a boundary line onto an adjacent, neighboring real property owned by another person unless: (a) a written agreement has been entered into between all persons who own the real property that is to be encompassed by the designated area; and (b) the Governing Body has approved the designated area.
- (iii) **SETBACK FOR DESIGNATED AREA.** No permit shall be issued under this Section unless the designated area is setback at least two feet (2') from any travel lane of the street and from any adjacent parking stalls.
- (iv) **SETBACKS FOR PARKLET FROM STREETS.**
  - (a) **MAIN STREET LOCATIONS.** For any parklet to be placed within a public right-of-way located on Main Street, no permit shall be issued under this Section unless the parklet is to be placed four feet (4') from the edge of the traffic lane or, in the event that a traffic lane is not designated, eleven feet (11') from the center of the street, unless a different position is required by the City Engineer.
  - (b) **OFF-MAIN STREET LOCATIONS – ANGLED PARKING.** For any parklet to be placed within a public right-of-way having angled parking and not located on Main Street, no permit shall be issued under this Section unless the parklet is to be placed six feet (6') from the center of a one-way street or eleven feet (11') from the center of a two-way street, as the case may be, unless a different position is required by the City Engineer.
  - (c) **OFF-MAIN STREET LOCATIONS – PARALLEL PARKING.** For any parklet to be placed within a public right-of-way having parallel parking and not located on Main Street, no permit shall be issued under this Section unless the parklet is to be placed six feet (6') from the center of a one-way street or eleven feet (11') from the center of a two-way street, as the case may be, unless a different position is required by the City Engineer.
- (v) **SETBACKS FOR PARKLET FROM OTHER INFRASTRUCTURE.**
  - (a) **VEHICLE INFRASTRUCTURE.** No permit shall be issued under this Section if the parklet is to be placed in a position that would be: (a) within three feet (3') of any public or private driveway; (b) within three feet (3') of any alley; or (c) within thirty feet (30') of any flashing signal, stop sign, yield sign, or traffic-control signal located at the side of a roadway.

- (b) **PEDESTRIAN INFRASTRUCTURE.** No permit shall be issued under this Section if the parklet is to be placed in a position that would be within twenty feet (20') of any crosswalk at an intersection.
    - (c) **UTILITY INFRASTRUCTURE.** No permit shall be issued under this Section if the parklet is to be placed in a position that would cover or interfere with the operation of any manhole, stormwater inlet, vault, and any other utility access point.
    - (d) **PROXIMITY TO FIRE INFRASTRUCTURE.** No permit shall be issued under this Section if the parklet is to be placed in a position that would be: (a) within any fire lane; (b) would be within fifteen feet (15') of any fire hydrant; (c) would interfere with the operation or use of any such fire lane or fire hydrant; and (d) would be within twenty feet (20') of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75') of said entrance, when properly sign-posted.
  - (C) **APPLICANT.** No permit shall be issued under this Section unless the applicant:
    - (i) Owns or leases real property that affronts the public right-of-way in which the parklet is to be placed;
    - (ii) Operates a business that is licensed with a Food Establishment License by the Kansas Department of Agriculture or that is licensed for on-premises consumption of alcoholic liquor or cereal malt beverage by the Kansas Department of Revenue – Alcoholic Beverage Control and by the City; and
    - (iii) Owns the parklet that is the subject of the application.
  - (D) **SUNSETTING.** Any permit issued under this Section shall automatically terminate, without further action, on December 31, 2024.
- (2) **PROCEDURE.** Any person who desires to place a parklet within any public right-of-way shall, prior to such placement, obtain a right-of-way permit from the Neighborhood & Development Services Department, as follows:
- (A) **APPLICATION.** The person shall submit an application to the Neighborhood & Development Services department on a form prescribed by said department, shall pay an application fee as set forth in Section 42-475, and shall submit the following information and documents, at a minimum:
    - (i) **NAME.** Name of applicant;
    - (ii) **ADDRESS.** Address of the real property that affronts the public right-of-way in which the parklet is to be placed; and
    - (iii) **SITE PLAN.** A general site plan including, at a minimum, an aerial view of the lot to be served by the parklet and public right-of-way in which the parklet is proposed to be located, including any surrounding areas from the middle of the street affronting such lot to the front of the building to be served by the parklet and from the side lot line to the other side lot line, with labels, boundary lines, lot lines, and dimensions, that shows and identifies

any buildings, structures, public infrastructure, and private infrastructure located thereon and that shows the approximate location of any tables, chairs, and any other personal property and structures proposed to be located on the parklet.

- (iv) **CONTRACTOR/TRADESPERSON.** The name of each contractor or tradesperson who will be installing the parklet, installing any road safety feature, or performing any work in relation to the parklet or within the designated area.
  - (v) **PLAT AND DEED.** A copy of the recorded plat in which the parklet is proposed to be located and a copy of the last recorded deed of record for the real property to be served by the parklet.
  - (vi) **GENERAL LIABILITY INSURANCE.** The applicant shall secure and file with the City Clerk, or any designee thereof, a certificate of insurance providing for public liability insurance coverage, including bodily injury and property damage insurance coverage, in an amount not less than \$2,000,000.00 per occurrence. The required insurance shall be in full force and effect for the term of the permit. The City of Garden City, Kansas shall be named as an additional insurer on any such policy. Any such policy shall be written by a company that is licensed to provide insurance in the State of Kansas, is in good standing with the Kansas Insurance Department, and is acceptable to the City.
  - (vii) **CATCH-ALL.** Any additional information or documents requested by the Director of the Neighborhood & Development Services department; and
- (B) **APPLICATION REVIEW PROCESS.** Each application submitted pursuant to this Section that is accompanied by the correct fee and all of the required information and documents shall be reviewed by the Director of the Neighborhood & Services department, or any designee thereof. In the event that the Director determines that the application satisfies all of the applicable requirements of this Section, the Director shall require the applicant to enter into a right-of-way use agreement pursuant to Subsection (d)(2)(D). In the event that the Director determines that the application does not satisfy all of the applicable requirements of this Section, the Director shall deny the application and shall, within a reasonable time following such denial, submit a written notice to the applicant advising the applicant: (A) of the denial; (B) the reasons for such denial; and (C) of the opportunity to have the denial reviewed by the Governing Body to Subsection (d)(2)(C).
- (C) **GOVERNING BODY REVIEW OF DENIAL.** Upon receipt of a denial notice pursuant to Subsection (d)(2)(B), the applicant may request that the application, as originally submitted and without the submission of additional information or documents, be reviewed by the Governing Body. Any such request shall be submitted in writing to the Director of the Neighborhood & Development Services department within thirty (30) days following the date of denial.
- (D) **RIGHT-OF-WAY USE AGREEMENT.** The person shall enter into a right-of-way use agreement with the City. The agreement shall be in a form prescribed by the Neighborhood & Development Services department; provided that each and every term and condition of such form are subject to amendment, change, deletion, addition, or supplementation by the Director of the Neighborhood & Development Services and the City Attorney or Assistant City Attorney, in

their sole discretion. Any agreement entered into pursuant to this Section shall be subject to and shall include each of the following terms and conditions, generally and at a minimum:

- (i) **INSURANCE.** A provision requiring that the applicant provide and maintain general liability insurance consistent with the general liability insurance provision set forth in subsection (d)(2)(A).
  - (ii) **INDEMNITY.** A provision indemnifying the City against any third-party claims that may result from the placement or use of the parklet within the public right-of-way, including, but not limited to, any claims relating to stormwater damage, motor vehicle collision, pedestrian injuries, patron injuries, and employee injuries.
  - (iii) **RELEASE.** A provision releasing the City from any first-party claims by applicant that may result from the placement or use of the parklet within the public right-of-way, including, but not limited to, any claims relating to stormwater damage and damage to the parklet.
  - (iv) **REMOVAL AND RELOCATION.** A provision requiring the applicant to temporarily remove or relocate the parklet at the request of the City or of the Kansas Department of Transportation for any reason, including, but not limited to, street cleaning, utility access, resurfacing, or construction.
  - (v) **COSTS OF REMOVAL AND RELOCATION.** A provision requiring the applicant to pay for any costs to remove or relocate the parklet, regardless of whether the removal or relocation is requested by the City, the applicant, or the Kansas Department of Transportation and regardless of the reason.
  - (vi) **COMPLIANCE WITH CODES AND LAWS.** A provision requiring that the applicant comply with all provisions of this Section and any applicable provisions of any ordinance, law, or regulation of any local, state, or federal government, or agency thereof, including, but not limited to, the Code and any federal statute, regulation, or guideline relating to the Americans with Disabilities Act.
- (3) **TRANSFER OF PERMIT.** Any person who is granted a right-of-way permit pursuant to this Section may, at any time prior to the sunset date set forth in Subsection (d)(1)(D), transfer the permit to another person, subject to the approval of the City. The transferee shall be required to submit a new application for a right-of-way use permit pursuant to Subsection (d) and shall otherwise comply with the provisions of this Section.
- (e) **SUSPENSION AND REVOCATION OF PERMIT.** The Director of the Neighborhood & Services Department, or any designee thereof, shall have the authority to initiate, receive, investigate, and report any complaint against a person who is granted a permit pursuant to this Section. In the event that the Director or designee finds and determines that the permittee has violated any provision of this Section, the Director may suspend or revoke the person's right-of-way use permit. The length of any suspension shall be in the sole discretion of the Director. Upon any such suspension or revocation, the Director shall provide written notice of such suspension or revocation to the permittee that includes, at a minimum, the facts alleged, the reason for such suspension or revocation, and the terms of any such suspension or revocation, including, but not limited to an order to remove the parklet, and any road safety features, personal property, or other items or objects from the right-of-way immediately or within a reasonable time. It shall be unlawful for any person to operate the parklet or to occupy the right-of-way during any term of suspension or revocation or in any manner that



violates the terms of any such suspension or revocation. Any such offense shall be punishable as provided for in Subsection (b)(3). Any permittee may appeal in writing to the Governing Body from any order of the Director suspending or revoking the permit for its final decision thereon. Upon a hearing, the Governing Body may lift, continue, or modify the suspension or revocation. No fee shall be refunded upon the suspension or revocation of any right-of-way use permit.

- (f) **RULES AND REGULATIONS.** Any person who is granted a right-of-way permit pursuant to this Section shall comply with each of the following rules and regulations and shall ensure that each of its employees and patrons comply with the same:
- (1) **DISPLAY OF PERMIT.** The permit shall be posted, at all times, in a conspicuous place inside of the building owned or leased by the permittee on the real property that affronts the public right-of-way in which the parklet is placed.
  - (2) **SMOKING PROHIBITED.** Smoking shall be prohibited on the parklet and within the designated area.
  - (3) **OPERATING HOURS.** The parklet shall not be used or operated by any person between the hours of 12:00 midnight and 6:00 a.m. for any purpose, except for cleaning or maintenance.
  - (4) **CONFINED AREA.** Any activities relating to the use, enjoyment, or operation of the parklet, including, but not limited to, the possession, consumption, sale, and service of food and beverage, shall only occur on the parklet, except for as otherwise authorized by the City or the State of Kansas. No alcoholic liquor or cereal malt beverage shall be possessed or consumed within the designated area unless the possession or consumption occurs on the parklet. Notwithstanding the foregoing, any employee of the permittee may transfer alcoholic liquor or cereal malt beverage through the designated area to a patron on the parklet, but only upon the conditions that the possession does not go beyond the licensed premises, including any extensions thereto, and that the employee can lawfully possess or serve alcoholic liquor or cereal malt beverage,
  - (5) **ALCOHOL POSSESSION, CONSUMPTION, SALES, AND SERVICE.** The permittee shall, at all times, comply with all applicable provisions of any ordinance, law, regulation, rule or policy of any local, state, or federal government, or agency thereof, including, but not limited to, the Kansas Department of Revenue – Alcoholic Beverage Control and by the City, relating to the possession, consumption, sales, and service of alcoholic liquor or cereal malt beverage.
  - (6) **ADA PEDESTRIAN ROUTES.** Any pedestrian routes required by the Americans with Disabilities Act, or any rule, regulation, or guideline related thereto, shall be maintained and shall be unobstructed at all times.
  - (7) **ANTI-DISCRIMINATION.** No patron shall on the grounds of race, color, national origin, disability, age, or sex shall be excluded from the parklet or shall be otherwise subjected to discrimination in the use of the parklet or any designated area.
  - (8) **MAINTENANCE.** The permittee shall, at all times, maintain the parklet and the designated area in a state of good repair, including, but not limited to, any personal property, objects, and items on the parklet or within the designated area. The permittee shall ensure that the parklet complies with the Property Maintenance Code, as adopted and incorporated by Section 18-131. In the event of any conflict between a provision of the Property Maintenance Code and this Section, this Section shall prevail and control.

- (9) **GARBAGE AND TRASH.** The parklet shall, at all times, be maintained free of any garbage and trash.
- (10) **TRASH RECEPTACLE.** At least one (1) trash receptacle shall be placed within the designated area and such receptacle shall be commercial-grade and for outdoor use.
- (11) **NO BUS TUBS, FOOD CARTS, OR SERVING TRAYS.** No bus tub, food cart, serving tray, or other receptacle shall be used to store dishes, whether clean or dirty, on the parklet or any areas designated on the permit.
- (12) **STORMWATER.** The parklet shall, at all times, be placed, used, and maintained in a manner that allows for the unobstructed flow and drainage of stormwater.
- (13) **WIND PROTECTION.** Any personal property placed in or on a parklet, including, but not limited to, furniture, lighting, umbrellas, fans, and heaters, shall be firmly secured against the wind at all times.
- (14) **LOCKED OR STOWED NIGHTLY.** Any personal property used for the operation or enjoyment of the parklet, including, but not limited to, furniture, lighting, umbrellas, fans, and heaters, shall be locked or stowed each night.
- (15) **NO OUTDOOR BARS.** No alcoholic liquor or cereal malt beverage shall be sold from or stored in any outdoor bar, cooler, or refrigerator located on the parklet or located within the designated area.
- (16) **NO OUTDOOR MUSIC.** No music shall be played, whether live or over speakers, from the parklet, from the designated area, or from any building on the real property that affronts the public right-of-way in which the parklet is placed, except for any music played over the City's downtown music system.
- (17) **NO TELEVISION OR PROJECTOR.** No television or projector shall be placed on the parklet, placed within the designated area, or placed on the outside of any building on the real property that affronts the public right-of-way in which the parklet is placed.
- (18) **NO SIGNS OR ADVERTISING.** No signs or advertisements shall be placed on the parklet.
- (19) **ELECTRICAL SUPPLY.** Any work performed pursuant to this subsection shall be performed by a contractor or tradesperson who has a valid license for such work issued by the City. Any such work shall be at the sole expense of the permittee. The permittee shall obtain any necessary permits and private easements from the City, at the sole expense of the permittee, that are required for any such work. Any electrical service in relation to the parklet or within the designated area shall be at the sole expense of the permittee. Any secondary electric lines installed to provide electricity to the parklet or to the designated area shall be buried below the surface of the ground, shall be protected by proper conduit, and shall comply any specifications required by the City Code, including, but not limited to, the Electrical Code and the General Improvements Handbook of the City. In the event that the parklet is removed for any reason or if the permit is revoked, all secondary electric lines and any related equipment, appurtenances, and ancillary components installed on behalf of the permittee pursuant to this subsection shall be promptly removed and the surface of right-of-way shall be restored to its original condition, including, but not limited to,

replacing any curb with concrete and replacing any sidewalk with concrete and bricks. The permittee shall not tap into any electrical connection or electrical supply of the City within the public right-of-way, including, but not limited, the lightpoles or any street decoration circuit.

- (20) **LIGHTING.** Any lighting must be for outdoor use may be supported by vertical poles but in no event shall lighting be hung, wrapped, stapled, nailed, or otherwise attached to or placed on any tree within the public right-of-way.
- (21) **HEATERS AND FANS.** Any heaters and fans placed on the parklet or within the designated area shall be commercial-grade and for outdoor use. Any such heater shall be powered by a portable propane tank, a portable natural gas tank, battery, or electricity. No combustible materials shall be used in any such heater, including, but not limited to, wood or wood pellets.
- (22) **CITY CONTROL.** The permittee shall promptly comply with any order of the City to remove any personal property, object, or item from the parklet or the designated area that the City, in its sole discretion, deems to be dangerous, distracting, or unsafe to pedestrians or vehicular traffic or that otherwise interferes, impedes, or hinders pedestrians or vehicular traffic.
- (23) **BARRIER MOVEMENT.** In the event that any barrier moves or shifts from its approved position, the barrier shall be immediately returned to its approved position.
- (24) **BACKUP ROAD SAFETY FEATURES.** In the event that barriers, wheel stops, reflective delineator posts, or any other road safety features are required by this Section, the permittee shall have backup barriers, wheel stops, reflective delineator posts, or other road safety features that are on-hand and are readily accessible that can be used to promptly replace any damaged or removed barrier, wheel stop, reflective delineator post, or other road safety feature. In the event of such damage or removal, the City reserves the right to temporarily close any parklet or designated area to the public until such time that all barriers, wheel stops, reflective delineator posts, and other road safety features can be replaced.
- (25) **TEMPORARY RELOCATION OF PARKLET.** The City reserves the right to temporarily relocate or order the temporary relocation of the parklet, including any barrier, wheel stop, reflective delineator post, or other road safety feature within the designated area, as follows:
  - (A) **IMMEDIATE COMPLIANCE – EMERGENCY SITUATIONS.** The immediate relocation of the parklet and any road safety features shall be required in the case of an emergency, as determined in the sole discretion of the City Manager, or in the event that the parklet or any road safety feature becomes unsafe or a hazard to any pedestrian or vehicular traffic, as determined in the sole discretion of the City Engineer with the consent of the City Manager. In either such event, the permittee shall immediately comply with any verbal or written order from the City Manager or the City Engineer, as the case may be, to temporarily relocate the parklet and any road safety features. In the event that the permittee is unavailable or unwilling to comply or in the event that the emergency requires immediate action, the City Manager shall have the authority to have the parklet and any road safety features temporarily relocated by any employee, contractor, or agent of the City. For the purposes of relocation, the term “emergency” shall include any request from the Kansas Department of Transportation to immediately remove the parklet or any road safety feature from the public right-of-way.

- (B) **TWO-WEEK COMPLIANCE – NON-EMERGENCY SITUATIONS.** The relocation of the parklet and any road safety features may be required by the City, in its sole discretion and for any reason, including, but not limited to, non-emergency private utility work, non-emergency public utility work, resurfacing, and street cleaning. In such event, the permittee shall comply with any verbal or written order from the City to temporarily relocate the parklet and any road safety features and shall do so within two (2) weeks after such order is issued. In the event that the permittee fails to comply with such order, the City shall have the authority to have the parklet and any road safety features temporarily relocated by any employee, contractor, or agent of the City.
- (C) **RELOCATION COSTS & DAMAGE.** The permittee shall be responsible for any costs to temporarily relocate the parklet and any road safety features, regardless of whether the relocation was performed by or on behalf of the permittee or by any employee, contractor, or agent of the City. The City shall not be responsible for any damage to the parklet or any road safety features resulting from any such relocation, except in the case of gross negligence committed by an employee, contractor, or agent of the City. The provisions of this subsection shall generally be included in any right-of-way use agreement entered into by and between the permittee and the City.
- (g) **DESIGN CRITERIA.** The parklet shall be constructed with: (A) railing on each side, except for the side facing the curb; and (B) an entrance on only the curb side of the parklet. In addition thereto, the parklet and any road safety features shall conform to any design renderings provided by the City Engineer.

**SECTION 3.** Sections 42-475 and 78-15 of the Code of Ordinances of the City of Garden City, Kansas, are hereby repealed, to be replaced as specified in this ordinance.

**SECTION 4.** That Sections 42-476 through 42-500 of the Code of Ordinances of the City of Garden City, Kansas shall not be affected by this ordinance and shall continue to be reserved for future use.

**SECTION 5.** If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

**SECTION 6.** This ordinance shall take effect and be in force from and after its publication in the Garden City Telegram.

APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, this 5<sup>th</sup> day of September, 2023.

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DEBORAH OYLER, Mayor

ATTEST:

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CELYN N. HURTADO, City Clerk

APPROVED AS TO FORM AND CONTENT:

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JAMES R. DUMMERMUTH, Assistant City Attorney