

1 [Administrative, Public Works Codes – Permit Review, and Limits on Fines for Shared Spaces
2 Violations]

3 **Ordinance amending the Administrative and Public Works Codes to urge departments**
4 **to review permits within 30 days, limit until April 1, 2023 the issuance of fines for**
5 **violations of shared spaces requirements except to enforce for physical access**
6 **requirements for persons with disabilities or first responder personnel, pedestrian and**
7 **vehicular safety, and removal of abandoned structures, and directing departments to**
8 **wind down the temporary program no later than March 31, 2023, subject to earlier**
9 **termination of the Local Emergency; affirming the Planning Department’s**
10 **determination under the California Environmental Quality Act; and ~~making findings of~~**
11 **~~consistency with the General Plan and the eight priority policies of Planning Code,~~**
12 **Section 101.1.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

18 Be it ordained by the People of the City and County of San Francisco:

20 Section 1. Environmental and Land Use Findings.

21 (a) —The Planning Department has determined that the actions contemplated in this
22 ordinance comply with the California Environmental Quality Act (California Public Resources
23 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
24 Supervisors in File No. 211301 and is incorporated herein by reference. The Board affirms
25 this determination.

1 (b) ~~On _____, the Planning Commission, in Resolution No. _____,~~
2 ~~adopted findings that the actions contemplated in this ordinance are consistent, on balance,~~
3 ~~with the City's General Plan and eight priority policies of Planning Code Section 101.1. The~~
4 ~~Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of~~
5 ~~the Board of Supervisors in File No. _____, and is incorporated herein by reference.~~

6
7 Section 2. General Background and Findings.

8 (a) On February 25, 2020, the Mayor issued a Proclamation (the "Proclamation")
9 declaring a local emergency to exist in connection with the imminent spread within the City of
10 a novel (new) coronavirus ("COVID-19"). On March 3, 2020, the Board of Supervisors
11 concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency.

12 (b) On June 9, 2020, the Mayor issued the 18th Supplement to the Proclamation to
13 create a temporary program, known as "Shared Spaces," for retail businesses and restaurants
14 to occupy the public sidewalk and parking lane fronting their premises, for retail businesses to
15 display and sell goods and merchandise and offer services and for restaurants to place tables
16 and chairs to offer outdoor dining, subject to certain conditions. The 18th Supplement found
17 that authorizing the use of more outdoor spaces like sidewalks, parking lanes, and other City
18 property for these purposes would allow restaurants and retail businesses to spread out their
19 wares and services to safely comply with the physical distancing requirements in the Health
20 Officer's orders and directives. The 18th Supplement also found that temporarily allowing
21 restaurants and retail businesses to use more outdoor spaces and take greater advantage of
22 the reopening authorizations while the City waived fees associated with such uses would ease
23 the economic burden on these businesses and allow some employees to return to work, thus
24 promoting the housing and health stability of these workers.

1 (c) In Ordinance No. 99-21, the City enacted legislation codifying the Shared
2 Spaces program, and creating a process to transition the program from temporary to
3 permanent status.

4 (d) Shared Spaces has been, and continues to be, a lifeline for small businesses
5 and the workers they employ across San Francisco. San Francisco has led the nation among
6 major cities instituting effective responses to the COVID-19 pandemic, and programs like
7 Shared Spaces have transformed underutilized space in the public realm for small business
8 recovery, arts, and other activities.

9 (e) Shared Spaces has also transformed public space in ways that advance a long-
10 term vision of enhanced pedestrian access to revitalized neighborhood commercial corridors.
11 Among the goals set forth in Ordinance No. 99-21 was identifying City blocks that would be
12 conducive to permanent sidewalk expansion and pedestrianization.

13 (f) But implementation of the Shared Spaces program has been characterized by
14 uneven enforcement. While the early days of the program saw small business owners
15 utilizing any resources they had on hand to cordon off adjacent sidewalks and curbside
16 parking lanes in order to continue business operations, the City has since created extensive
17 regulations that include and physical accessibility and life safety requirements to balance the
18 needs of small businesses with ~~against~~ other public health and safety needs, including
19 regulations seeking to ensure compliance with the Americans With Disabilities Act. While
20 some of these requirements were the subject of public hearings and approval by legislative
21 bodies, an overwhelming number of them were crafted administratively by departments with
22 little input from small business owners, disability advocates, or other members of the public.
23 The result has been a confusing web of regulations, the sources of which are frequently hard
24 to identify.

1 (g) Until small businesses are capable of returning to pre-pandemic levels of sales
2 and service, the assessment of fines and fees related to the Shared Spaces program inhibits
3 their ability to effectively participate in that recovery. The City and all stakeholders will benefit
4 from the use of alternative means of bringing small businesses into compliance with the
5 regulations, and to exercise flexibility in the implementation of existing regulations in
6 accordance with public health and safety considerations. The assessment of administrative
7 fines should be limited to enforcing accessibility and life safety ~~physical access~~ requirements
8 necessary for people with disabilities or emergency responder personnel, ensuring visibility
9 (daylighting) at intersections identified in the Vision Zero High-Injury Network, or and requiring
10 removal of any abandoned ~~if the structures has been abandoned.~~

11
12 Section 3. Chapter 94A of the Administrative Code is hereby amended by revising
13 Sections 94A.5, 94A.9, and 94A.12, to read as follows:

14 **SEC. 94A.5. SHARED SPACE PERMIT – APPLICATION, ISSUANCE,**
15 **MODIFICATION, AND REVOCATION.**

16 * * * *

17 **(c) Shared Space Permit – Issuance; Conditions of Approval; Limited Duration.**

18 (1) **Issuance.** To the maximum extent feasible, application review shall be
19 completed within 30 days of the date a complete application is submitted. Issuance of a
20 permit authorizes the Permittee to create a Shared Space by occupying the location with
21 physical treatments or improvements and/or activating the location with programming. For the
22 Core City Agencies, a Shared Space Permit shall incorporate the requirements of and
23 substitute for a permit that would otherwise be required under other sections of the Municipal
24 Code.

25 * * * *

1 **SEC. 94A.9. ENFORCEMENT OF REQUIREMENTS.**

2 * * * *

3 (c) **Enforcement of Shared Space Permit Requirements.**

4 (1) Each Core City Agency shall enforce the requirements of the Shared
5 Space Permit~~s~~ that are within its jurisdiction. Public Works shall be the primary point of contact
6 for any enforcement action pertaining to a Sidewalk or Curbside Shared Space; MTA shall be
7 the primary point of contact for any enforcement action pertaining to a Roadway Shared
8 Space; and the ~~Department~~Division of Real Estate shall be the primary point of contact for any
9 enforcement action pertaining to a City Lot Shared Space. Enforcement may be exercised
10 either by (A) using the procedures of Section 94A.5 to modify conditions of the issued permit,
11 or to withdraw approval of the permit by severance or revocation, or (B) using the
12 enforcement provisions of the Code that regulates its activities: the Public Works Code for
13 Public Works; the Transportation Code for the MTA; the Planning Code for private property;
14 and the Police Code for the Entertainment Commission.- Enforcement by the Director of Real
15 Estate is set forth in subsection (~~c~~~~b~~)(2) below. Until April 1, 2023, the issuance of administrative
16 fin~~e~~s or penalt~~y~~ies shall be limited to: enforcing physical access requirements necessary for
17 emergency responder personnel, and people with disabilities or emergency responder
18 personnel, including but not limited to unobstructed access to the sidewalk, maintenance of an
19 accessible route with diverters, accessible tables, the provision of an appropriate platform
20 threshold and, when provided, ramps that meet accessibility requirements; ensuring visibility
21 (daylighting) at intersections identified in the Vision Zero High-Injury Network; or and requiring
22 removal of abandoned if the structures has been abandoned. Beginning on April 1, 2023, this
23 limit shall expire by operation of law and administrative fines and penalties may be issued to ensure
24 compliance with the Program in all respects.

25 * * * *

1 **SEC. 94A.12. TRANSITION OF EXISTING SHARED SPACES AND PARKLETS.**

2 **(a) Conversion of Permits Issued During the COVID-19 Pandemic.**

3 **(1) Extension of pandemic Shared Spaces Program and Permits.** Subject
4 to the wind down provisions of the Mayor’s February 25, 2020 Proclamation Declaring the
5 Existence of a Local Emergency and the 18th Supplement to that Proclamation, the Core City
6 Agencies shall operate the Shared Spaces program authorized by the Mayor’s Proclamation
7 until ~~July 1, 2022~~March 31, 2023, unless the Shared Spaces program authorized by the
8 Mayor’s Proclamation terminates sooner. Any occupancy permitted as a Shared Space under
9 that authority may continue pursuant to the terms of the applicable permit (each a “pandemic
10 Shared Spaces Permit”), subject to the revocation provisions of this Chapter 94A.

11
12 Section 4. Article 15 of the Public Works Code is hereby amended by revising Section
13 793.4, to read as follows:

14 **SEC. 793.4. VIOLATION OF PERMIT CONDITIONS, OPERATIONAL**
15 **REQUIREMENTS, OR ADMINISTRATIVE REGULATIONS; ENFORCEMENT ACTIONS**
16 **AND PENALTIES.**

17 **(a) Enforcement Actions; Penalties.** If any person has occupied a Shared Space
18 in violation of any Permit conditions, operating requirements, or regulations applicable to the
19 Shared Space, the Director of Public Works may take any action authorized by this Code that
20 is considered necessary to abate or correct the violation. The Director is expressly authorized
21 to:

22 (1) Modify the Shared Space Permit, withdraw the Director’s approval of the
23 Permit, or request revocation of the Permit by the Core City Agencies pursuant to Section
24 94A.5(g) of the Administrative Code;

1 (2) Issue a criminal citation pursuant to the provisions of Section 792(e)(1)(A)
2 of this Code that is applicable to Street Plazas;

3 (3) Issue an administrative citation and assess the administrative penalties
4 authorized by Section 792(e)(1)(B) of this Code for Street Plazas; *provided, however, until April*
5 *1, 2023, the issuance of administrative fines or penalties shall be limited to: enforcing physical access*
6 *requirements necessary for emergency responder personnel, and people with disabilities or*
7 *emergency responder personnel, including but not limited to unobstructed access to the*
8 *sidewalk, maintenance of an accessible route with diverters, accessible tables, the provision*
9 *of an appropriate platform threshold and, when provided, ramps that meet accessibility*
10 *requirements; ensuring visibility (daylighting) at intersections identified in the Vision Zero*
11 *High-Injury Network; or and requiring removal of abandoned if the structures has been*
12 *abandoned. Beginning on April 1, 2023, this limit shall expire by operation of law and administrative*
13 *fines and penalties may be issued to ensure compliance with the Program in all respects.*

14 (4) Call upon other City officials to assist in the enforcement of this Article 15,
15 including but not limited to the Chief of Police and the City Attorney;

16 (5) Seize, remove, or demolish any structures or furniture placed in public
17 sidewalk or roadway areas.

18 (A) If a permit to place the structure or furniture has been rescinded or
19 expired, before any such structure or furniture is seized, the Permittee shall be notified and
20 given 10 business days to remove the structure or furniture. If the Permittee does not remedy
21 the underlying violation leading to the rescission of the permit and/or apply for a Shared
22 Space Permit within the time prescribed, the City may seize, remove, or demolish the
23 structure or furniture.

24 (B) Seized furniture shall be retained by the City and may be
25 recovered by the responsible party for a period of at least 30 business days following seizure.

1 As a condition of recovering any furniture seized pursuant to this Section or receiving a
2 subsequent Shared Spaces Permit, the Permittee shall pay an impound fee covering the
3 actual cost to the City of transporting and storing such furniture, unless the seizure is deemed
4 improper following a hearing under this subsection (a)(5)(-).

5 (C) If the Director determines that it is practicable to do so, Public
6 Works shall retain any seized structures. As a condition of recovering any structure seized
7 pursuant to this Section or receiving a subsequent Shared Spaces Permit, the Permittee shall
8 pay an impound fee covering the actual cost to the City of transporting and storing such
9 structure, unless the seizure is deemed improper following a hearing under this subsection
10 (a)(5)(-).

11 (D) If the Director determines that it is not practicable to do so, Public
12 Works may demolish any unpermitted structure placed in the right-of-way. Where a Permittee
13 is responsible for an unpermitted structure that requires demolition, the Permittee shall not be
14 eligible for a subsequent Shared Spaces Permit until the Permittee has paid the fee covering
15 the actual costs to the City of demolishing and disposing of the structure(s). Such recoverable
16 costs may include those incurred by Public Works and any other City department, including
17 the City Attorney's Office, for time and materials spent enforcing the requirements of the
18 permit.

19 ~~(D)~~(E) Notwithstanding any other provision of this Section 793.4, if the
20 Director determines that any structure or furniture is placed in public sidewalk or roadway
21 areas in such a place or manner as to pose an immediate and serious danger to persons or
22 property, the City may seize such structure and furniture without prior notice to the Permittee if
23 it is impractical to remedy the danger by moving the structure or furniture to another point on
24 the sidewalk or public right-of-way.

1 (F) Following any seizure, the Permittee shall be notified promptly of
2 such seizure and shall have the right to request an informal hearing before a designated City
3 official to determine whether the seizure was proper. The Permittee must request the hearing
4 within 10 days of receiving notice of the seizure. Any furniture seized pursuant to this Section
5 shall be retained by the City and may be recovered as provided herein.

6 Failure to provide any notice to a Permittee pursuant to this section shall
7 not give rise to any claims or cause of action against the City; and

8 (6) Take any other enforcement action authorized by this Code that is
9 applicable to occupancy of the public right-of-way.

10

11 Section 5. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance.

15

16 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the "Note" that appears under
21 the official title of the ordinance.

22

23 APPROVED AS TO FORM:
24 DAVID CHIU, City Attorney

25 By: _____ /s/

AUSTIN M. YANG
Deputy City Attorney

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