

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: December 23, 2021

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 211301

Ordinance amending the Administrative and Public Works Codes to limit until April 1, 2023, the issuance of fines for violations of shared spaces requirements except for physical access requirements for persons with disabilities or first responder personnel; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

c: Kerry Birnbach

1 [Administrative, Public Works Codes - Limits on Fines for Shared Spaces Violations]

2

3 **Ordinance amending the Administrative and Public Works Codes to limit until April 1,**
4 **2023, the issuance of fines for violations of shared spaces requirements except for**
5 **physical access requirements for persons with disabilities or first responder**
6 **personnel; affirming the Planning Department’s determination under the California**
7 **Environmental Quality Act; and making findings of consistency with the General Plan,**
8 **and the eight priority policies of Planning Code, Section 101.1.**

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

13

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

15

16 Section 1. Environmental and Land Use Findings.

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

22 (b) On _____, the Planning Commission, in Resolution No. _____,
23 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
24 with the City’s General Plan and eight priority policies of Planning Code Section 101.1. The
25

1 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
2 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

3
4 Section 2. General Background and Findings.

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

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

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

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

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

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

21 (g) Until small businesses are capable of returning to pre-pandemic levels of sales
22 and service, the assessment of fines and fees related to the Shared Spaces program inhibits
23 their ability to effectively participate in that recovery. The City and all stakeholders will benefit
24 from the use of alternative means of bringing small businesses into compliance with the
25 regulations, and to exercise flexibility in the implementation of existing regulations in

1 accordance with public health and safety considerations. The assessment of administrative
2 fines should be limited to enforcing physical access requirements necessary for people with
3 disabilities or emergency responder personnel, or if the structure has been abandoned.

4
5 Section 3. Chapter 94A of the Administrative Code is hereby amended by revising
6 Section 94A.9, to read as follows:

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

8 * * * *

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

10 (1) Each Core City Agency shall enforce the requirements of the Shared
11 Space Permit_s that are within its jurisdiction. Public Works shall be the primary point of contact
12 for any enforcement action pertaining to a Sidewalk or Curbside Shared Space; MTA shall be
13 the primary point of contact for any enforcement action pertaining to a Roadway Shared
14 Space; and the ~~Department~~Division of Real Estate shall be the primary point of contact for any
15 enforcement action pertaining to a City Lot Shared Space. Enforcement may be exercised
16 either by (A) using the procedures of Section 94A.5 to modify conditions of the issued permit,
17 or to withdraw approval of the permit by severance or revocation, or (B) using the
18 enforcement provisions of the Code that regulates its activities: the Public Works Code for
19 Public Works; the Transportation Code for the MTA; the Planning Code for private property;
20 and the Police Code for the Entertainment Commission.- Enforcement by the Director of Real
21 Estate is set forth in subsection (~~c~~)(2) below. Until April 1, 2023, the issuance of administrative
22 fines or penalties shall be limited to enforcing physical access requirements necessary for people with
23 disabilities or emergency responder personnel, or if the structure has been abandoned. Beginning on
24 April 1, 2023, this limit shall expire by operation of law and administrative fines and penalties may be
25 issued to ensure compliance with the Program in all respects.

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

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

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

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

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

(3) Issue an administrative citation and assess the administrative penalties authorized by Section 792(e)(1)(B) of this Code for Street Plazas; *provided, however, that until April 1, 2023, the issuance of administrative fines and penalties shall be limited to enforcing physical access requirements necessary for people with disabilities or emergency responder personnel, or if the structure has been abandoned. Beginning on April 1, 2023, this limit shall expire by operation of law and administrative fines and penalties may be issued to ensure compliance with the Shared Spaces program in all respects;*

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

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

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

9 (B) Seized furniture shall be retained by the City and may be
10 recovered by the responsible party for a period of at least 30 business days following seizure.
11 As a condition of recovering any furniture seized pursuant to this Section or receiving a
12 subsequent Shared Spaces Permit, the Permittee shall pay an impound fee covering the
13 actual cost to the City of transporting and storing such furniture, unless the seizure is deemed
14 improper following a hearing under this subsection (a)(5)(-).

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

21 (D) If the Director determines that it is not practicable to do so, Public
22 Works may demolish any unpermitted structure placed in the right-of-way. Where a Permittee
23 is responsible for an unpermitted structure that requires demolition, the Permittee shall not be
24 eligible for a subsequent Shared Spaces Permit until the Permittee has paid the fee covering
25 the actual costs to the City of demolishing and disposing of the structure(s). Such recoverable

1 costs may include those incurred by Public Works and any other City department, including
2 the City Attorney's Office, for time and materials spent enforcing the requirements of the
3 permit.

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

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

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

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

19
20 Section 5. Effective Date. This ordinance shall become effective 30 days after
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
23 of Supervisors overrides the Mayor's veto of the ordinance.

1 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the “Note” that appears under
6 the official title of the ordinance.
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8 APPROVED AS TO FORM:
9 DAVID CHIU, City Attorney

10 By: /s/
11 AUSTIN M. YANG
12 Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative, Public Works Codes - Limits on Fines for Shared Spaces Violations]

Ordinance amending the Administrative and Public Works Codes to limit until April 1, 2023, the issuance of fines for violations of Shared Spaces requirements except for physical access requirements for persons with disabilities or first responder personnel; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1

Existing Law

Currently, most Shared Spaces parklets are permitted under the Mayor's proclamation declaring a local emergency to exist in connection with the imminent spread within the City of COVID-19. Pursuant to Administrative Code Section 94A.12(d), the City may not use fines to bring permittees into compliance, unless the violations pertain to physical access requirements for persons with disabilities or first responder personnel.

Upon the expiration of the temporary Shared Spaces program, permittees will need to convert their permits to the permanent Shared Spaces program, which is authorized under Administrative Code Chapter 94A. Section 94A.9 authorizes City Agencies to use fines and penalties for violations of the permanent program. Fees for the permanent program are waived until March 31, 2023.

Public Works Code Section 793.4 authorizes Public Works to use administrative citations under Public Works Code Section 792(e) for the permanent Shared Spaces program.

Amendments to Current Law

This amendment would limit the issuance of fines to enforce violations of the permanent Shared Spaces program until April 1, 2023, except for violations related to physical access requirements for persons with disabilities or first responder personnel, or when the structure has been abandoned.

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Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor:

For Clerk's Use Only