

1 [Public Works Code - Plaza Program]

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3 **Ordinance amending the Public Works Code, by adding Section 792, to establish a**
4 **permit program for plazas on the public right-of-way; and affirming the Planning**
5 **Department’s determination under the California Environmental Quality Act.**

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

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

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15 Section 1. Findings.

16 (a) The findings set forth regarding the Plaza Program in companion legislation
17 creating Administrative Code Chapter 94 that establishes the Plaza Program are incorporated
18 herein by reference. Said findings are in Clerk of the Board of Supervisors File No. 140061.

19 (b) A regulatory program governing plazas on public right-of-way, which are referred to
20 as Street Plazas, should be established in the Public Works Code and under the jurisdiction of
21 the Department of Public Works.

22 (c) The Planning Department has determined that the actions contemplated in this
23 ordinance comply with the California Environmental Quality Act (California Public Resources
24 Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination.
25 Said determination is on file with the Clerk of the Board of Supervisors in File No. 140063 and
is incorporated herein by reference.

1 Section 2. The Public Works Code is hereby amended by adding Section 792, to read
2 as follows:

3 **SEC. 792. STREET PLAZAS.**

4 (a) Purpose. The purpose of this Section is to establish a regulatory program for Street Plazas,
5 as defined in Administrative Code Chapter 94.

6 **(b) Permit Requirements.**

7 (1) A Plaza Encroachment Permit (“Plaza Permit”) shall be processed under the same terms
8 and requirements as a Street Encroachment Permit, also known as a Major Encroachment Permit, in
9 Public Works Code Section 786 except as provided in this Section 792.

10 (2) A Plaza Permit is not subject to the annual assessment fee as set forth in Section 786.7.

11 (3) Permit Applicant. The applicant for a Plaza Permit shall have a strong, demonstrated
12 connection to the neighborhood in which the Plaza is located.

13 (4) Application Submittal. In addition to all the materials required for a Street Encroachment
14 Permit in Section 786 et seq., the applicant shall provide the following information as part of the
15 application submittal:

16 (A) Information demonstrating the requirements of Subsection (b)(3) above, including
17 but not limited to, documentation of public outreach processes and proposals for on-going community
18 engagement.

19 (B) Proposed daily, weekly, and monthly programmed hours of use of the Street Plaza
20 on an annual basis for which the Permit will be active. The Permit shall specify a minimum number of
21 yearly programmed events.

22 (C) Proposed scope of activities on an annual basis for which the Permit shall be
23 active. This may include use of moveable, temporary, or fixed furniture or structures; maintenance of
24 hardscape and/or landscaping on the plaza; general programming and activation of the Plaza; and
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1 commercial or non-commercial offerings, including, but not limited to, arts activities; entertainment;
2 food, drink, and/or other refreshment; retail sales; sports; and general recreation.

3 (D) The number of proposed restricted access events, if any, that will be held annually,
4 which number shall not exceed eight (8) single day events. No more than one day shall be used to set
5 up for any approved restricted access events and no more than one day shall be used for break down
6 and clean-up of any approved restricted access events. Scheduling of any approved restricted access
7 events shall be spread throughout the calendar year.

8 (E) Proposed strategies to engage with existing City programs.

9 (F) A proposed signage program.

10 **(5) Selection of Applicant Prior to Permit Processing.**

11 (A) When DPW determines that a portion of the public right-of-way should be eligible
12 for Street Plaza status, it shall post the potential Plaza location with a request for applications for a
13 Plaza Permit to activate the subject site, mail notice of the request to property owners within a 300 foot
14 radius of the exterior boundaries of the Plaza, place a similar request on the Department's website,
15 and take other actions the Director deems advisable to notify the public and interested organizations of
16 the request for applications. The notices shall be posted and made available for at least three
17 (3)months before DPW closes the application period. DPW shall make reasonable efforts to keep the
18 Plaza location notice visible and legible during the application period.

19 (B) DPW shall conduct the same application notice process at the end of a Plaza Permit
20 term for an established Street Plaza if DPW determines that the Street Plaza activation should continue
21 at that location.

22 (C) If more than one application is received during this application period, the
23 Department shall hold a public hearing on the potential applicant(s). DPW shall provide the same
24 notice for the hearing as provided under Subsection (5)(A)above. Based on the information and
25 testimony at the hearing as well as any other documentation provided, the DPW Director shall issue a

1 decision concerning the selected applicant. The DPW Director's decision shall be final and not subject
2 to appeal. After such selection, the Department shall meet with the selected applicant to determine
3 what outstanding materials are necessary to complete processing of the Plaza Permit.

4 (D) The Department shall complete any outstanding permit processing steps as set forth
5 in Section 786 for Street Encroachment Permits.

6 **(6) Maintenance, Liability, Insurance, and Other Permit Terms.**

7 (A) DPW shall specify in the Plaza Permit the scope of Permittee's maintenance and
8 liability responsibility that shall apply to the Permit based on the Permittee's authorized hours of use of
9 the Street Plaza and the Permittee's scope of activities.

10 (B) The Permit shall identify required liability, indemnity, and insurance coverages, as
11 approved by the City Risk Manager or successor agency.

12 (C) The Permit shall specify the number of annual restricted access events, if any.

13 (D) The Permit shall specify that the Permit may be deemed abandoned if the Plaza
14 Permittee conducts less than the stipulated number of minimum annual programmed events.

15 (E) The Permit shall require that the Steward submit a monthly calendar of events to
16 the local District Police station, the DPW Director, and the Plaza Program thirty (30) days prior to the
17 start of the subject month.

18 (F) **Signage.** The Permit shall include an approved signage program.

19 (G) **Financial Records.** The Plaza Permittee shall make its financial records related to
20 the use of the Street Plaza available to the DPW Director for inspection upon written request of the
21 Director.

22 (7) Because certain activities may require additional permits or approvals from City or State
23 agencies, boards, commissions, or departments, the Plaza Permittee shall be solely responsible for
24 obtaining all other permits or approvals that may be necessary for or related to activities at the Street
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1 Plaza. Any event that involves at least one of the following activities, also shall be required to obtain
2 approval from the Interdepartmental Staff Committee on Traffic and Transportation (ISCOTT):

3 _____ (A) Sales or service of alcohol;

4 _____ (B) A fuel-powered generator with a fuel capacity greater than 10 gallons;

5 _____ (C) Installation of a tent or canopy in excess of 400 square feet;

6 _____ (D) Closure of all or any portion any public right-of-way tangent to and/or outside the
7 delineated area of the Plaza;

8 _____ (E) Events that exceed decibel maximums described in the Plaza Limited Live
9 Performance permit, if applicable, issued pursuant to Police Code Sections 1060 et seq.; or

10 _____ (F) Activities that exceed the general scope of the Plaza Permit agreement.

11 (8) Due to possible damage to City infrastructure, any event that involves at least one of the
12 following activities also shall be required to obtain review and possible issuance of a Temporary
13 Occupancy permit from the Department:

14 _____ (A) Stages that are not pre-fabricated and that require installation or construction with
15 trained staff; or

16 _____ (B) Any structure in excess of 250 pounds per square inch.

17 (9) The standard term of a Plaza Permit shall be no longer than 5 years; provided, however,
18 that in unique circumstances or in cases where the Permittee installs significant improvements as part
19 of the permit, the DPW Director is authorized to provide for a longer or unlimited term.

20 Notwithstanding the above, all Plaza Permits are revocable at the will of the DPW Director.

21 (10) **Regulations for Street Plazas.**

22 _____ (A) The DPW Director shall administer all Street Plazas pursuant to the requirements,
23 rules, and regulations set forth herein or in regulations that the DPW Director adopts.

24 _____ (B) **Operational Requirements.** The following operational requirements shall apply to
25 Street Plazas and shall be posted in a prominent location in each Street Plaza:

1 (i) **Peddling and Vending Merchandise.** No person shall bring, or cause to be brought,
2 for the purposes of sale or barter, or have for sale, or sell in exchange, or offer for sale or exchange
3 any goods, wares, or merchandise in the Street Plaza, except for which the City and County of San
4 Francisco issues any required permit or other authorization. Notwithstanding the above provision, the
5 sale or distribution of newspapers, periodicals, or other printed or otherwise expressive material is
6 allowed subject to the applicable requirements of the Public Works Code.

7 (ii) **Performance of Labor.** No person, other than authorized City personnel, shall
8 perform any labor, on or upon the Plaza, including, but not limited to, taking up or replacing soil, turf,
9 ground, pavement, structures, trees, shrubs, plants, grass, flowers, or similar activities without prior
10 permission from the DPW Director.

11 (iii) **Camping Prohibited.** The provisions of Park Code Section 3.12 concerning
12 camping shall apply to the Plaza except that the DPW Director shall administer these provisions.

13 (iv) **No Unpermitted Structures.** There shall be no stationing or erecting of any
14 structure(s) on the Plaza without prior permission from the DPW Director.

15 (v) **No Smoking.** Pursuant to the Municipal Code, smoking is prohibited on any
16 unenclosed area of property in the City and County of San Francisco that is under the jurisdiction of
17 any City department if the property is a park, square, garden, sport or playing field, pier, or other
18 property used for recreational purposes, or as a farmers' market. Given the use of the subject areas as
19 an outdoor public plazas, this prohibition on smoking shall apply to Street Plazas.

20 (vi) **Other Restrictions.**

21 (aa) There shall be no skateboarding, bicycle riding, or pets off leash, without
22 prior permission from the DPW Director.

23 (bb) No alcohol is allowed to be consumed in City Plazas without prior
24 permission from the DPW Director and all required San Francisco and State authorizations and
25 permits.

1 (C) Noise and odors, unless otherwise permitted, shall be contained within immediate
2 area of the Plaza so as not to be a nuisance to neighbors;

3 (D) Notices shall be prominently displayed during events that urge patrons to leave the
4 Plaza premises and neighborhood in a quiet, peaceful, and orderly fashion and to please not litter or
5 block driveways in the neighborhood. Such notices shall be removed after each event; and,

6 (E) The Plaza Permittee or its employees or volunteers shall walk a 100-foot radius
7 from the Plaza some time within thirty (30) minutes after the daily use period as set forth in the Permit
8 and shall pick up and dispose of any discarded beverage containers and other trash left by patrons.

9 (2) **Exceptions.** After written request from a Plaza Permittee, the DPW Director is authorized
10 to issue non-material exceptions or other minor amendments to the Good Neighbor Policies. The DPW
11 Director shall issues such exceptions in writing, retain the granted exceptions in a file available for
12 public review, and shall post such correspondence on the Department's and Plaza Program's website.

13 **(e) Violation of Permit or Regulations; Penalties.**

14 (1) If any person has occupied a Street Plaza in violation of these regulations or those that the
15 DPW Director has adopted, the DPW Director or his designee or agent shall immediately order the
16 violation to vacate the occupied area or abate the violation. Should the violation not be corrected as
17 ordered, the Permittee or person shall be subject to the actions and penalties set forth below for each
18 violation.

19 **(A) Criminal Penalty.**

20 (i) Any person who shall violate any of the provisions of these regulations shall be
21 guilty of an infraction. Every violation determined to be an infraction is punishable by (a) a fine not
22 exceeding \$100 for the first violation within one year; (b) a fine not exceeding \$200 for a second
23 violation within one year from the date of the first violation; (c) a fine not exceeding \$500 for the third
24 and each additional violation within one year from the date of the first violation.

1 (ii) When a government official authorized to enforce this Section has reasonable cause
2 to believe that any person has committed an infraction in the official's presence that is a violation of
3 this Section, the official may issue a citation to that person pursuant to California Penal Code, Part II,
4 Title 3, Chapters 5, 5C, and 5D.

5 (B) **Administrative Penalty.** In the alternative to the criminal penalty authorized by
6 Subsection (e)(1)(A) of this Section, Department of Public Works officials designated in Section 38 of
7 the Police Code may issue administrative citations for violations of these regulations. The
8 administrative penalty shall not exceed \$300 per day for each violation. Such penalty shall be assessed,
9 enforced, and collected in accordance with Section 39-1 of the Police Code.

10 (2) The Plaza Program will establish administrative procedures concerning methods to
11 process, address, respond to, and document any complaints concerning operation of a Plaza. If the
12 DPW Director receives verified complaints concerning violations of the terms and conditions of the
13 Permit within the initial six (6) month period of operation, the DPW Director shall conduct a public
14 hearing on the Permittee's conduct. After the initial six (6) month term, the DPW Director may extend
15 the term to every twelve (12) months for the consideration of subsequent complaints and action
16 thereon. Based on the information presented at the hearing, the Director may terminate, suspend,
17 modify, or condition the Permit or take any other action the Director deems appropriate under the
18 terms of the Permit in response to the Permittee's conduct.

19 (3) If the Permittee conducts less than the minimum number of annual programmed events
20 stipulated in the Permit, the DPW Director may determine that the Permit has been abandoned or may
21 terminate, suspend, modify, or condition the Permit or take any other action the Director deems
22 appropriate under the terms of the Permit in response to the Permittee's conduct.

23 (f) **Regulations and Orders.** The Director may adopt such orders, policies, regulations, rules,
24 or standard plans and specifications as he or she deems necessary in order to preserve and maintain
25 the public health, safety, welfare, and convenience ("Regulations"). Such Regulations may include,

1 but are not limited to, permit application materials, placement of and information contained on signs,
2 site conditions, accessibility of sidewalks and streets. When such Regulations may affect the operations
3 and enforcement of the Municipal Transportation Agency, the Director of the Department of Public
4 Works shall consult with and provide an opportunity to comment to the General Manager of the
5 Municipal Transportation Agency prior to adoption of such Regulations.

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7 Section 3. Effective Date. This ordinance shall become effective 30 days after
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
10 of Supervisors overrides the Mayor's veto of the ordinance.

11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By: _____
14 John D. Malamut
Deputy City Attorney

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