

BOARD of SUPERVISORS



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February 13, 2014

File No. 140063

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On January 28, 2014, the Mayor introduced the following legislation:

File No. 140063

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

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Environmental Planning
Jeanie Poling, Environmental Planning

*No a project under CEQA
Guidelines Sections 15060(c)
and 15378, because there
is no direct or indirect
physical change in the
environment.*

*Nannie L Turrell
February 18, 2014*

1 [Public Works Code - Plaza Program]

2

3 **Ordinance amending the Public Works Code, by adopting 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 ~~*italics Times New Roman font*~~.
9 **Board amendment additions** are in double-underlined Arial font.
10 **Board amendment deletions** are in ~~Arial font~~.
11 **Asterisks (* * * *)** indicate the omission of unchanged Code
12 subsections or parts of tables.

10

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

12

13 Section 1. Findings.

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

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

21 (c) 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.). The Board of Supervisors hereby affirms this determination.
24 Said determination is on file with the Clerk of the Board of Supervisors in File No.
25 _____ and is incorporated herein by reference.

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

4 **SEC. 792. STREET PLAZAS.**

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

7 **(b) Permit Requirements.**

8 (1) A Street Plaza Permit shall be processed under the same terms and requirements as a Street
9 Encroachment Permit, also known as a Major Encroachment Permit, in Public Works Code Section
10 786 except as provided in this Section 792.

11 (2) A Street Plaza Permit is not subject to the annual assessment fee as set forth in Section
12 786.7.

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

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

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

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

24 (C) Proposed scope of activities on an annual basis for which the Permit shall be
25 active. This may include use of moveable, temporary, or fixed furniture or structures; maintenance of

1 hardscape and/or landscaping on the plaza; general programming and activation of the Plaza; and
2 commercial or non-commercial offerings, including, but not limited to, arts activities; entertainment;
3 food, drink, and/or other refreshment; retail sales; sports; and general recreation.

4 (D) The number of proposed restricted access events, if any, that will be held annually,
5 which number shall not exceed eight (8) such events.

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

7 (F) A proposed signage program.

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

9 (A) Three (3) months prior to issuing a permit for a Street Plaza, DPW shall post the
10 Plaza site with a request for applications and place a similar request on the Department's website.
11 DPW shall make reasonable efforts to keep the Plaza site notice visible and legible during the posting
12 period.

13 (B) If more than one application is received during this notification period, the
14 Department shall hold a public hearing on the potential applicant(s). Based on the information and
15 testimony at the hearing as well as any other documentation provided, the DPW Director shall issue a
16 decision concerning the selected applicant. After such selection, the Department shall meet with the
17 applicant to determine what outstanding submission materials are necessary to complete permit
18 processing.

19 (C) The Department shall complete any outstanding Permit processing steps as set forth
20 in Section 786.

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

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

25

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

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

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

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

9 (F) **Signage.** The Permit shall authorize a signage program.

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

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

18 (A) Sales or service of alcohol;

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

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

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

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

1 (F) Activities that exceed the general scope of the Plaza Major Encroachment Permit
2 agreement issued to the approved Plaza Permittee.

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

6 (A) Stages that are not pre-fabricated and that require installation or construction with
7 trained staff; or

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

9 (9) The term of a Street Plaza Permit shall be no longer than 5 years; provided, however, that
10 in unique circumstances or in cases where the Permittee installs significant improvements as part of the
11 permit, the DPW Director is authorized to provide for a longer or unlimited term. Notwithstanding the
12 above, all Street Plaza Permits are revocable at the will of the DPW Director.

13 (10) Regulations for Street Plazas.

14 (A) All Street Plazas shall be administered by the DPW Director pursuant to the
15 requirements, rules, and regulations set forth herein or in regulations that the DPW Director adopts.

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

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

24 (ii) Performance of Labor. No person, other than authorized City personnel, shall
25 perform any labor, on or upon the Plaza, including, but not limited to, taking up or replacing soil, turf,

1 ground, pavement, structures, trees, shrubs, plants, grass, flowers, or similar activities without prior
2 permission from the DPW Director.

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

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

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

12 (vi) **Other Restrictions.**

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

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

18 (cc) General Advertizing is prohibited.

19 (c) **Additional Requirements Adopted at Time of Street Plaza Approval.** Other regulations
20 and requirements shall be adopted when each Street Plaza is legislatively approved and incorporated
21 into the Plaza Program in accordance with Administrative Code Chapter 94. Such regulations and
22 requirements shall be posted in a prominent location in each Street Plaza.

23 (d) **Exceptions to Operational Requirements and Permit Terms.**

24 (1) **Operational Requirements Exceptions.** From time to time and due to unique
25 circumstances, the Operational Requirements set forth above in Subsections (b) or (c) may not be

1 appropriate for a particular event. In such cases, and after a duly noticed public hearing, the DPW
2 Director may issue an exception to the requirements of Subsections (b) or (c) if he or she finds in his or
3 her sole discretion that the public interest would be served by the grant of the exception.

4 (2) **Permit Terms Exceptions.** After written request from a Permittee, the Director is
5 authorized to issue non-material exceptions or other minor amendments to the terms of a Street Plaza
6 Permit. The Director shall issue such exceptions in writing, retain the granted exceptions in a file
7 available for public review, and shall post such correspondence on the Department's and Plaza
8 Program's website.

9 (e) **Good Neighbor Policies.**

10 (1) The Permittee for a Street Plaza shall manage the Plaza in accordance with the following
11 good neighbor policies during the times of use as set forth in the Plaza Permit:

12 _____ (A) The quiet, safety, and cleanliness of the Plaza and its adjacent area shall be
13 maintained;

14 _____ (B) Proper and adequate storage and disposal of debris and garbage shall be provided;

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

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

20 _____ (E) Employees of the Plaza Permittee shall walk a 100-foot radius from the Plaza some
21 time within thirty (30) minutes after the daily use period as set forth in the Permit and shall pick up and
22 dispose of any discarded beverage containers and other trash left by patrons.

23 (2) **Exceptions.** After written request from a Steward, the DPW Director is authorized to issue
24 non-material exceptions or other minor amendments to the Good Neighbor Policies. The Director shall

25

1 issues such exceptions in writing, retain the granted exceptions in a file available for public review,
2 and shall post such correspondence on the Department's and Plaza Program's website.

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

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

9 **(A) Criminal Penalty.**

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

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

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

24 (2) The Plaza Program will establish administrative procedures concerning methods to
25 process, address, respond to, and document any complaints concerning operation of a Plaza. If the

1 DPW Director receives verified complaints concerning violations of the terms and conditions of the
2 Permit within the initial six (6) month period of operation, the DPW Director shall conduct a public
3 hearing on the Permittee's conduct. After the initial six (6) month term, the DPW Director may extend
4 the term to every twelve (12) months for the consideration of subsequent complaints and action
5 thereon. Based on the information presented at the hearing, the Director may terminate, suspend,
6 modify, or condition the Permit or take any other action the Director deems appropriate under the
7 terms of the Permit in response to the Permittee's conduct.

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

12 (f) Regulations and Orders. The Director may adopt such orders, policies, regulations, rules,
13 or standard plans and specifications as he or she deems necessary in order to preserve and maintain
14 the public health, safety, welfare, and convenience ("Regulations"). Such Regulations may include,
15 but are not limited to, permit application materials, placement of and information contained on signs,
16 site conditions, accessibility of sidewalks and streets. When such Regulations may affect the operations
17 and enforcement of the Municipal Transportation Agency, the Director of the Department of Public
18 Works shall consult with and provide an opportunity to comment to the General Manager of the
19 Municipal Transportation Agency prior to adoption of such Regulations.

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

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 John D. Malamut
Deputy City Attorney

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