

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.

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

21 Section 1. Environmental and Land Use Findings.

22 (a) —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.). Said determination is on file with the Clerk of the Board of  
25 Supervisors in File No. 211301 and is incorporated herein by reference. The Board affirms  
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~~)(2) below. Until April 1, 2023, the issuance of administrative  
16    fin~~e~~s or penalties 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                   **(d) Enforcement of pandemic Shared Spaces Permits.** ~~Prior to the conversion of a~~  
13 ~~pandemic Shared Space permit to a Curbside Shared Space Permit, t~~The Core City Agencies  
14 shall not use administrative fines prior to April 1, 2023 to bring a pandemic Shared Space  
15 permittee into compliance with the ~~physical~~ requirements of the pandemic Shared Spaces  
16 permit, unless the violations pertain to: enforcing physical access requirements necessary for  
17 emergency responder personnel, and people with disabilities, including but not limited to  
18 unobstructed access to the sidewalk, maintenance of an accessible route with diverters,  
19 accessible tables, the provision of an appropriate platform threshold and, when provided,  
20 ramps that meet accessibility requirements; ensuring visibility (daylighting) at intersections  
21 identified in the Vision Zero High-Injury Network; or requiring removal of abandoned structures  
22 ~~emergency responder personnel.~~

23                   \* \* \* \*

1 Section 4. Article 15 of the Public Works Code is hereby amended by revising Section  
2 793.4, to read as follows:

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

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

11 (1) Modify the Shared Space Permit, withdraw the Director's approval of the  
12 Permit, or request revocation of the Permit by the Core City Agencies pursuant to Section  
13 94A.5(g) of the Administrative Code;

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

16 (3) Issue an administrative citation and assess the administrative penalties  
17 authorized by Section 792(e)(1)(B) of this Code for Street Plazas; *provided, however, until April*  
18 *1, 2023, the issuance of administrative fines or penalties shall be limited to: enforcing ~~physical access~~*  
19 *requirements necessary for emergency responder personnel, and ~~people with disabilities~~ or*  
20 *emergency responder personnel, including but not limited to unobstructed access to the*  
21 *sidewalk, maintenance of an accessible route with diverters, accessible tables, the provision*  
22 *of an appropriate platform threshold and, when provided, ramps that meet accessibility*  
23 *requirements; ensuring visibility (daylighting) at intersections identified in the Vision Zero*  
24 *High-Injury Network; or ~~and requiring removal of abandoned if the structures has been~~*  
25

1 ~~abandoned.~~ Beginning on April 1, 2023, this limit shall expire by operation of law and administrative  
2  fines and penalties may be issued to ensure compliance with the Program in all respects.

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

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

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

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

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



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

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

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

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

22 (6) Take any other enforcement action authorized by this Code that is  
23 applicable to occupancy of the public right-of-way.  
24  
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