

[Public Works Code - Plaza Program]

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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.

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

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

Section 1. Findings.

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

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

(c) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). The Board of Supervisors hereby affirms this determination. 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
5 set up for any approved restricted access events and no more than one day shall be used for
6 break down and clean up of any approved restricted access events. Scheduling of any
7 approved restricted access events shall be spread throughout the calendar year. Public access will
8 not be restricted beyond any approved restricted access events as described in this
9 Subsection.

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

11 (F) A proposed signage program.

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

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

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

1 (C) If more than one application is received during this application period, the
2 Department shall hold a public hearing on the potential applicant(s). DPW shall provide the same
3 notice for the hearing as provided under Subsection (5)(A)above. Based on the information and
4 testimony at the hearing as well as any other documentation provided, the DPW Director shall issue a
5 decision concerning the selected applicant. The DPW Director's decision shall be final and not subject
6 to appeal. After such selection, the Department shall meet with the selected applicant to determine
7 what outstanding materials are necessary to complete processing of the Plaza Permit.

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

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

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

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

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

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

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

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

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

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

6 (A) Sales or service of alcohol;

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

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

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

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

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

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

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

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

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

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

24 (10) Regulations for Street Plazas.

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

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

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

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

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

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

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

24 (vi) **Other Restrictions.**
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1 (aa) There shall be no skateboarding, bicycle riding, or pets off leash, without
2 prior permission from the DPW Director.

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

6 (cc) General advertising is prohibited.

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

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

12 (1) **Exceptions to Operational Requirements.** From time to time and due to unique
13 circumstances, the Operational Requirements set forth above in Subsections (b) or (c) may not be
14 appropriate for a particular event. In such cases, and after a duly noticed public hearing, the DPW
15 Director may issue an exception to the requirements of Subsections (b) or (c) if he or she finds in his or
16 her sole discretion that the public interest would be served by the grant of the exception.

17 (2) **Exceptions to Permit Terms.** After written request from a Permittee, the DPW Director is
18 authorized to issue non-material exceptions or other minor amendments to the terms of a Plaza Permit
19 as long as the DPW Director, in consultation with the City Attorney's Office, determines that such
20 exceptions or amendments do not materially increase City's costs or obligations, decrease the benefit
21 City receives under the Plaza Permit for the Street Plaza, and are reasonable within the purpose of the
22 Plaza Program. The Director shall issue such exceptions in writing, retain the granted exceptions in a
23 file available for public review, and shall post such correspondence on the Department's and Plaza
24 Program's website.

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

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

3 (A) The quiet, safety, and cleanliness of the Plaza and its adjacent area shall be
4 maintained;

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

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

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

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

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

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

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

24 **(A) Criminal Penalty.**

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

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

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

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

24 (3) If the Permittee conducts less than the minimum number of annual programmed events
25 stipulated in the Permit, the DPW Director may determine that the Permit has been abandoned or may

1 terminate, suspend, modify, or condition the Permit or take any other action the Director deems
2 appropriate under the terms of the Permit in response to the Permittee's conduct.

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

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

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: 
20 John D. Malamut
21 Deputy City Attorney

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City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 140063

Date Passed: June 03, 2014

Ordinance amending the Public Works Code, by adding 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.

May 12, 2014 Land Use and Economic Development Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 12, 2014 Land Use and Economic Development Committee - RECOMMENDED AS AMENDED

May 20, 2014 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

June 03, 2014 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

File No. 140063

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/3/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved