



AARON PESKIN

MEMORANDUM

DATE: June 7, 2021

TO: Mayor London N. Breed;
Andres Power, Policy Director, Office of the Mayor;
Robin Abad-Ocubillo, Shared Spaces Program Director;
Co-Sponsor Supervisors Mandelman, Safai, Stefani and Haney

FROM: Supervisor Aaron Peskin

CC: Land Use & Transportation Committee Members

SUBJECT: Shared Spaces

The Shared Spaces Program has, without a doubt, been a bright spot during one of the darkest years in San Francisco memory. Born largely out of necessity, it has kept innumerable small businesses afloat – primarily restaurants and bars, though many traditional retailers have availed themselves of the Program as well. Amid a delivery economy whose market share ballooned during Shelter in Place Orders, Shared Spaces gave San Franciscans new reason and ability to patronize our commercial corridors. As the City prepares new tools to combat storefront vacancies, Shared Spaces brings an altogether new retail experience to San Francisco. We have a shared public interest in ensuring the long-term vitality of the Shared Spaces Program – for the benefit of small businesses and a vibrant, accessible, and uniquely urban quality of life. **I want to make it abundantly clear that I support the notion of “permanence” and wish, albeit with some sensible, reasonable amendments, to be added as a co-sponsor of legislation to make these spaces a permanent part of our city’s landscape.**

As I raised at our last Land Use Committee meeting when we first heard this 75-page piece of complex legislation, the breadth of the Shared Spaces program and haste with which they have been (largely self-) implemented has, not surprisingly, led to unintended consequences. Not every small business has enjoyed their benefit, lower revenue businesses have been unable to invest the extra capital, choke points have occurred on narrower sidewalks, departments are still assessing staffing demands and fiscal impact, and legitimate concerns have been raised about the Program’s consistency with Vision Zero pedestrian safety goals and other City policy mandates. City staff freely admitted to me that an unknown number

of Shared Spaces have never been in compliance with permit conditions. Small businesses in North Beach – who I joined a year ago to barricade portions of the street before Shared Spaces was branded with its name – have been the subject of litigation alleging failure to comply with the Americans with Disabilities Act.

As the economic recovery rationale becomes a less central justification for Shared Spaces, near-term considerations will give way to long-term policy goals. It is incumbent on San Francisco policymakers to shepherd Shared Spaces into a more formal long-term vision to get it right; to ensure that we appropriately address adverse impacts and not let them fester. I think we also need to acknowledge that this is an evolving area of public policy that will need tweaks and updates in the months and years ahead based on data and on-the-ground experience. Confronting those frictions now, in the context of this legislation, is an expression of our shared values for Shared Spaces – enhancing safety and accessibility for pedestrians, seniors, and people with disabilities; and enabling the success of minority-owned and independent small business owners, and an array of business types.

As the Supervisor of the District with more permitted Shared Spaces than any other District in the City – more than 10 times the District with the fewest, and in a smaller geographic area – I’m making the below suggestions regarding legislation that would permanently ensconce Shared Spaces into San Francisco law. I want to particularly thank the **North Beach Business Association, Chinatown TRIP, Russian Hill Neighbors, the North Beach Neighbors, Senior and Disability Action, the San Francisco Locally Owned Merchant Alliance (SFLOMA), Livable City, and the Race and Equity in all Planning (REP) Coalition** for their extensive engagement and thoughtful input. I also want to thank my staff, Lee Hepner, who has done the heavy policy lifting in my office in conjunction with a less than collaborative Mayor’s office.

Working through these issues is not inconsistent with wanting the program to succeed; it is critical to that success. I will now outline, in no particular order, the Mayor’s current proposal and my suggestions to the Land Use Committee for improvements as follows:

1. Provide specific legislative guidelines to enhance safety and accessibility for seniors and people with disabilities:

The legislation as proposed makes a single general policy reference to ensuring equitable access for people with disabilities, with no specificity for small businesses to follow, and no plan for inspection, compliance and enforcement of that vague goal. While the Mayor’s staff have repeatedly expressed that they do not support additional legislative changes, I propose that:

- If an “Integrated Shared Space” proposes adjacent Curbside and Sidewalk Shared Spaces, stationary, ADA-compliant elements shall be required on the sidewalk to mitigate risk of encroachment into required sidewalk access. City staff would be able to

waive that requirement, in consultation with Public Works' ADA Access Officer, and based on site-specific conditions that would ensure at least 8 feet of access on sidewalks more than 12 feet wide, and at least 6 feet of access on sidewalks under 12 feet wide; and

- Public Works would be charged with developing, and Permittees would be required to post on their Shared Space in a visible location, a public notice in English, Chinese, Spanish, and Filipino, which directs members of the public on how to file suggestions/complaints with 311, along with any relevant information pertaining to required disability access at the Shared Space.

2. Streamline interdepartmental coordination by reducing costly, redundant staff review:

Although the Planning Department doesn't have any jurisdiction over public rights of way, the legislation as currently proposed nevertheless charges the Planning Department with coordinating review and approval of Shared Spaces applications, including routing to "Core City Agencies" (principally, Public Works and MTA), collaborating with Core City Agencies in the review and approval of a permit, developing "Shared Spaces Agreements" that are separate from the permit itself, "supporting" the monitoring of a Permittee's compliance with terms and conditions, and "coordinating outreach" to Permittees. I propose as follows:

- As the City Agency with jurisdiction over the sidewalk and the actual issuance of permits for Sidewalk and Curbside Shared Spaces, Public Works is actually the most appropriate entity to act as the central coordinating agency. Planning should consult on advertising and design standards to reduce visual blight and ensure integration into the existing streetscape, but there is no reason why Planning should be performing the central function regarding permits outside of their jurisdiction, or performing redundant review of applications when Public Works already has the staff and expertise to review and issue permits in the public right of way, a function they have performed well for decades. Not to mention that Planning has plenty of work to do and a significant backlog and are not requesting additional staffing for this effort.
- The legislation should be further amended to remove the redundant and un-defined concept of "coordinating agencies," given that the defined term "Core City Agencies" is already used throughout the legislation. The legislation should also be amended to eliminate the redundant concept of a "Shared Spaces Agreement", given that the permit itself is modifiable at any time and already provides the specificity to account for site-specific considerations.

3. Strike a balance between private and public use that is feasible for businesses to comply with, enforceable, and emphasizes the "shared" nature of the public realm.

The current legislation requires that "alternate public seating, including a public bench," be accessible to persons who are not patrons of a business while the Shared Space is being used for commercial purposes. It is unthinkable and impractical to think that most restaurants

will be able to provide truly public seating while customers are dining, or to imagine the seating arrangement that would be conducive to members of the public sitting directly adjacent to outdoor diners. The legislation also provides that businesses would only be required to make their Shared Spaces available “during daylight hours,” without any consideration for how businesses will strictly comply with a mandate to un-barricade a Shared Space at sunrise. I propose as follows:

- A more workable compromise would allow businesses to use their Shared Spaces for exclusively commercial purposes, and to make up for that diminished public access with a more robust public seating requirement, available at all hours when the space is not occupied for commercial use. Enhanced public seating would include at least one public bench for every 15 linear feet of Curbside Shared Space, or per subdivided section of a Curbside Shared Space. This seating would *not* need to be made available for the public during hours when a Permittee is using the Shared Space for commercial purposes, but it would remain entirely publicly accessible (e.g., with fixed public seating, and without being fenced off or boarded up) for all other hours of the day. After all, this is all public property to truly be shared.

4. Shared Spaces should also mean a shared private and public obligation to maintain their safety and cleanliness, and an accounting of the impact to core street cleaning service.

The legislation as currently proposed requires small businesses to maintain the safety and cleanliness of their Shared Space and its adjacent area within an arbitrary 100-foot radius, even though many Curbside Shared Spaces may be no more than 15 feet in length, and without an understanding of impacts to the City’s provision of core mechanical street sweeping service. I propose as follows:

- Small businesses would continue to maintain the safety and cleanliness of their Shared Space and its surroundings, but Public Works would also be obligated to provide requested assistance with the removal of hazardous waste. Small businesses should not be putting their staff in the precarious position of having to deal with hazardous waste in the public right of way while being denied any assistance from trained City staff.
- Public Works would also be required to report to the Board of Supervisors within one year on any disruption to mechanical street sweeping services, along with policy recommendations for how to mitigate any impairment to that core street cleaning service.

5. Ensure better integration with and enhancement of Vision Zero, Better Streets, and Transit First policies.

The legislation currently makes only passing reference to potential conflicts with “future City projects.” There is otherwise no mention of existing City policies with which Shared Spaces may conflict, or where consideration could be made to enhance pedestrian safety, transit service, and the overall quality of the streetscape. I propose as follows:

- Within 6 months, relevant Core City Agencies should be required to report back to the Board of Supervisors with a list of all small businesses who have been or would be required to remove their Shared Spaces to accommodate returning transit lines, street repaving, or that are inconsistent with Vision Zero projects completed in the last 10 years, along with recommendations for how to mitigate loss to small businesses. Require review of existing and future Shared Spaces for consistency with the purpose and intent of past streetscape projects, including recently-completed bulbouts and daylighting projects. While Shared Spaces have improved the pedestrian experience in some ways, we cannot sacrifice the millions of dollars the City has invested in recent improvements to high injury corridors.

6. Provide small businesses with an Extended Recovery Period and postpone the assessment of fees and certain fines for up to two years.

The legislation currently requires small businesses to apply for conversion to a permanent Shared Space permit prior to the expiration of their “pandemic Shared Space permit,” many of which expire in less than a month. While City staff have represented that they intend to extend existing permits through December 31, 2021, the legislation actually makes no mention of this. Application fees of up to \$6,000 per business and additional annual fees would be assessed beginning in March 2022, and small businesses would immediately be subject to enforcement of permit conditions through administrative fines levied by a multiplicity of enforcement agencies. To allow for more robust small business recovery, I propose as follows:

- Small businesses should have a longer runway to bring their Shared Spaces into compliance with the myriad new requirements set forth in this legislation. There is no reason why the temporary permits cannot be explicitly extended in the legislation until at least July 2022. Further, the City should not be assessing fees until small businesses have had an extended opportunity to recoup losses incurred over the past year, and during the extended repayment of back-rent afforded by the City’s commercial eviction moratorium. At the earliest, fees should not be assessed until March 2023. Fines should not be assessed until the end of this extended recovery period, unless fines are necessary to bring Shared Spaces into compliance with disability access requirements, late-night noise restrictions, or to prevent exclusive use for commercial purposes outside the operating hours set forth in the Shared Spaces permit.

7. In addition to the aforementioned issues, the legislation should also be amended to:

- Expand public notice to include notice to ground floor residents who live adjacent to Sidewalk or Curbside Shared Spaces, in addition to the currently-required notice to property owners who may not live nearby;
- Require the City by and through Public Works to maintain records of required proof of liability insurance and indemnification;
- Require MTA and Public Works to provide recommendations to the Board of Supervisors within 6 months of sidewalks that would benefit from widening to accommodate a

concentration of Shared Spaces (possible candidate blocks in District 3 could include the 1300 block of Grant Avenue and the 500 block of Green Street);

- Require the Controller to provide a full economic impact analysis, including to understand the impact, if any, to businesses that have not availed themselves of the Shared Spaces Program; of the revenue impact to SFMTA of diminished parking meter revenue; and of the fiscal impact to department staff for implementation and enforcement of the Shared Spaces Program;
- Cause Public Works to develop multi-lingual public notices that Permittee's would be required to post in visible locations on Shared Spaces regarding the submission of complaints; and
- Assess the impact to other public amenities, including public access to bike racks.

I appreciate all of the work that has gone into the early pandemic driven Shared Spaces Program as well as the work that has gone into crafting this piece of legislation. I think we all agree that the most pressing urgency is to allow small businesses the opportunity to continue their recovery from the pandemic. The City can and should allow that recovery to continue, while investing resources in studying the implementation and evolution of the Shared Spaces Program. The above recommendations would accommodate a wide range of concerns, and could be further examined in the context of an informal working group that convenes periodically to share information and observations.

My office is committed to improving the Shared Spaces Program to mitigate potential harms while providing small businesses with the dependability they need to continue their recovery.

Sincerely,

A handwritten signature in black ink that reads "Aaron Peskin". The signature is written in a cursive, flowing style.

Aaron Peskin