

## AL's Place Shared Spaces Permit Revocation Appeal

### Preface:

I will start by saying that I am very grateful for the Shared Spaces program. It has literally saved lives. I am also grateful for the Shared Spaces team and sensitive to the fact that they have had to take this on without adequate resources. It must be very stressful. I feel for them. However, that does not excuse their conduct. I have wasted hundreds of hours due to this dispute. These are hours that could have been spent doing something good for the community. I have continued with this dispute not only to advocate for my rights as a permit holder and member of the public, but to advocate for the rights of other permit holders in the Mission district as well. I am fortunate in that I have kept up with the Manual over its 10 or more iterations and know it very well. I am also fortunate in that my first language is English. Even with that fluency it has been convoluted and complicated to keep up with the guidelines. If it has been this hard for me, I cannot imagine how difficult it would be for a permit holder in our Mission D9 community whose first language is not English, to navigate the program. Therefore, I must push back against the Shared Spaces teams overreach and hope for reform. It may be too late to save my parklet, but hopefully its' not too late to save the parklets of other permit holders.

I respectfully request that you take the time to thoroughly read this entire document. I am sorry that it is so long. These parklets are very important to me, and I think the appropriate resolution of this issue is important to the City, its stakeholders, and its small businesses. I have accordingly put a lot of thought into this document.

### Statement Section Briefs:

1. Greg shocked me on 8/22 by suggesting that I remove my parklets. His reasoning was based on an aggregate of inaccurate factors
2. If I had known that DPW would force removal of my parklet for announcing closure, I never would have done so, risking loss of a valuable business asset. I would have augmented service to remain open
3. I did not know that I would have to remove my parklet because there is nothing remotely implying that anywhere in the 120 page Manual, or in Admin Code 94a
4. I informed Greg where he was incorrect and explained my position. He acknowledged via email, then went silent. I took this to mean that he recognized his errors and relented. The next time I heard from DPW was 3 months later with a notice of violation out of the blue, demanding I remove my parklet within 2 weeks, or be fined 180k per year
5. I was given no formal notice to correct or comply with any conditions prior to April 2023. None at all.
6. The formal process in the Manual (p.68-70) requires a compliance advisory, and if I have been unresponsive, and there is a hazardous condition, a compliance and enforcement cover sheet. If I don't resolve the issues per the dates listed on the C&E cover sheet, DPW can escalate to a notice of violation
7. Shared spaces has a history of emailing directions to me full of errors and citations of obsolete codes. I can't take action at casual comments from DPW. I will follow formal notices, as the manual requires.
8. I have received only one formal compliance advisory. On 11/2. It lists "Abandoned Parklet" as the first compliance issue. The email from DPW containing this compliance advisory states that I must resolve issues by 3/31. I took that to mean that I had..... until 3/31 to resolve the issue. How else could I take it?
9. On 11/22 I received an NOV with "abandoned / inactive structure" as the sole compliance issue. If DPW writes me on 11/2 that I must correct a specific compliance issue by 3/31, they cannot slap me with NOV 3 weeks later for not fixing that issue. This notice cites Order 205516, which does not mention abandonment anywhere within it
10. Parklets are allowed to pause operations provided they are maintained and not abandoned (Manual p.65)
11. There are 4 criteria for removal listed in the Manual (p.65). I do not meet any of those criteria. Self initiated removal says "*if for some reason you decide you no longer want to keep your parklet*" you must remove it.
12. Ordinance 55-22 narrows enforcement to public safety, accessibility, and abandonment. I have not abandonment my parklet. **Will you allow me the time to read the premise for this ordinance?**
13. On 12/22 Shared Spaces first listed the criteria for abandonment. I do not meet those criteria
14. DPW cannot enforce for non-operation alone pre-April 2023, so long as the structure is being maintained and not abandoned
15. I have continually maintained my parklets. I have receipts proof. Failure to maintain triggers a notice to correct, not removal. I have never received a notification to fix maintenance issues.
16. DPW is basing failure to maintain in the revocation on a single photo from 11/22. We get hit with graffiti all the time and always have. I re-paint every couple of weeks. They just happened to come during a 3 week period when my painter, myself, and my daughter, daughter were out sick, plus my pregnant wife with covid. Had I gotten a complaint I would have addressed it immediately

17. The purpose of the pandemic shared spaces program is business economic recovery, not enjoyment of public right of way (Manual p.68, Order 203547). but Greg told me on 12/2 that I must remove due to not serving the public. Though not required by code, I tried to solve that problem by returning to serving the public on 12/6. Greg scoffed at this
18. If this appeal is denied I request a reasonable amount of time to remove the parklet. It will take a minimum of 6-8 weeks
19. Should this appeal not go in my favor I request judicial review
20. I submitted an application for permanent program in October. Would I demo and remove the parklet, and then re-build the parklet? That sounds crazy

### Statement Section Elaborations and Substantiations:

1) Greg emailed me on 8/22/22 to ask me when I would be removing my parklet. He used an aggregate of factors to determine that my parklet needed to be removed. The factors that he based his determination on were incorrect. He started by saying that my parklet would not be viable for the legislated permit due to a) daylighting needs, b) two parking space max, and c) encroaching on the neighbors. He then summarized *"When I look at cessation of use, structural non-compliance, and lack of an allowable footprint in near term future there is no basis to retain the Parklet"*.

- a) I am capable of augmenting my parklet for daylighting and vertical clearance.
- b) The Manual allows for approval of structures longer than two parking spaces as long as they meet certain criteria, which they do. (Manual p.102) states: *"Length: You may apply for a maximum of two metered parking spaces, or 40 linear feet along the curb for parallel parking... Exceptions may be considered if all the other curbside functions (Manual p.3 Curbside Functions) are adequately accommodated on the block"*. It has been explained to me via email from SFMTA that my parklet meets the site condition requirements for that exception to be made.
- c) My parklet runs less than 24" in front of my neighbors' door. This is less than 1/2 of a marked parking space. I do not require consent. See Admin. Code Sec. 94A.5 §(a)(3)(A), as well as Manual p.80 option 3A.

He then "reiterated" on 12/2/22 the list of factors that lead him to decide I must remove my parklet, with some additions. See his reiterated list below, as well as my in-line responses to them.

- 1) The restaurant on the permit for this site is closed.
  - o AL's Place took an operational pause. I still work at the restaurant, and I've been working on reopening or selling. I am now reopening (**I re-opened on 12/6/22**). Restaurant closure alone is not immediate grounds for removal.
- 2) The parklet itself is not structurally compliant with the legislated program.
  - o I am aware. I submitted an application in October for the legislated program that addresses all upgrades. I am not required to be fully compliant with the legislated program until April 2023. I will make changes once I have a conditionally approved permit.
- 3) The parklet as it stands today would not be admissible in the program after 3/31.
  - o I am aware. I submitted an application in October for the legislated program that addresses all upgrades. Same as above. This is not a reason to force removal, or even grounds for enforcement
- 4) We have received multiple complaints about the site that we are obligated to follow up on. These complaints have been related to non-use and site conditions and have been substantiated by our team.
  - o I have been maintaining the structure the same as I was when AL's Place was open. I asked Greg for examples of how I was not maintaining it but I was not provided with any. I have received zero warnings or notices relating to maintenance and site conditions. Maintenance issues are dealt with via correction notices, and only removals if I refuse to comply. p.65 of the Manual says that if I don't maintain I *"may be subject to violations and fines. If maintenance issues are not resolved, parklet operators may be required by Public Works to remove the parklet at their own expense"*. DPW gave me no opportunity to resolve (not that I agree that there was anything to resolve).
- 5) The site is not being maintained and has fallen into disrepair:

- I am assuming this has to do with all of the graffiti. It may look to someone like it is not being maintained and has been left that way for months. That is not correct. I re-paint is every couple of weeks and then it gets tagged again almost immediately. I have been maintaining the structure the same as I have been for 8 years. A build up of graffiti in that area does not indicate I am not maintaining, and is not grounds for removal. It is grounds for a notice to fix the issue.

2) My parklets are highly valuable assets owned my business. They cost over \$40,000 to build, have cost over \$20,000 to maintain, and generate millions in revenue. Besides their financial value, they hold a massive amount of emotional value to me as well. I am aware this asset sits atop city property and specifically the public right of way. I am aware that the city can take away my privilege to use their property. However, that does not change the fact that the parklets are a physical asset owned by my business. My point here is that the City should endeavor to encourage or compel me to *fix* an issue with my parklets rather than simply forcing me to *destroy* a valuable asset owned by my business. Imagine if SFDPH told me I had to demolish and remove my walk-in refrigerator because it was not getting cold enough. That would not happen. I would repair the refrigerator so that it would maintain proper safety temperatures.

My announcement of closing the restaurant and leaving the industry was a press release, based on PR strategy. It has no determination over what I can and will do with my business. My company has not dissolved. I still hold the lease. I still have all relevant permits, licenses, and insurances. I still have a turnkey restaurant that can be activated at a moment's notice should I decide that is what works for my life. There is nothing that forced me to abruptly close. I could have easily augmented our service to fall in line with my personal needs. I chose to announce a full closure in order to a) end on a high note, and b) give closure to our staff and our guests. I can decide to re-open at any moment, and I could have remained open had I known that I would be forced to remove my parklets. Greg is confusing his knowledge of a press release with having knowledge of my internal business decisions.

I never would have announced a closure of my restaurant if I had known in advance that it could mean the loss of my parklets. Greg's inaccurate emails suggesting that I remove my parklets came *after* I had made the announcement to close.

3) There is not a single place in the entire manual where it remotely implies that I would need to remove my parklet simply because I announced my closure. The manual has been updated over ten times, starting at 28 pages in length, and currently growing to 120 pages as of December 2022. There are 4 criteria listed for removal. None of which are statutory removal for non-operation.

There is not a single place in the entirety of Admin. Code 94a where it remotely implies that I would need to remove my parklet simply because I announced my closure. Even in §94a.6 "Operational Requirements" there is no requirement listed to be actively serving the public at all times. There is no mention of "cease of operations" or "non-operational". Nothing.

There is not a single place in the entire 9 pages of my executed Shared Spaces permit (20TC-01623) that lists as one of the many "conditions" that I must be actively serving the public at all times. There is no mention of "cease of operations" or "non-operational". Nothing.

The City has had over a dozen opportunities in last 2.5 years to add a new provision that codifies a requirement to be in constant operation to hold a shared spaces permit; if that really been the intent of the program. They could have added this provision any of the 10+ times that they iterated and expanded the Manual, when authoring the Legislation and Admin. Code 94a, when authoring Ordinance 51-22, when authoring Ordinance 99-21, etc.... But the city never took that action. The only mention of cease of operation or non-operations stems from the 2020 emergency DPW Order 203547. That mention in the emergency order pertained to restaurants in 2020 who were going out of business right and left. If you look at the Chronology, that provision was never adopted in the Manual, never correlated with anything in the Admin code, and was in fact supplanted by the term "Abandoned" in ordinance 51-22. The city does not want abandoned, dilapidated, falling apart, dangerous parklets left on the street. That is understandable. What DPW has done in my case is to decide internally that they want my parklet gone, and then attempted to pin that desire on alleged Abandonment to provide them a mechanism for forced removal. This is not understandable.

The Manual is the primary permit holder facing document for guidelines and requirements. We are *required* "read the Shared Spaces Manual in its entirety ... and to refer to it often throughout the process" (Manual p.C). It has been described on Shared Spaces webinars and elsewhere as our playbook and what we are intended to follow. It has been explained to us as the product of taking the underlying code and elaborating on it for sake of clarification. We have been given no reason expect that there would be rights given to us under the Manual, that are at the same time prohibited in the underlying code.

I realize that the executed permit as well as the Manual slip it in there that we must also comply with all Codes and Ordinances. However, it is not reasonable to expect the average small business owner and permit holder to have the skill set, knowledge, and resources to be able to hunt down, read, analyze, and comprehend every internal Code that remotely relates to Shared Spaces. This would include DPW Code Sec 793; DPW code Sec 100.5; DPW Orders (constantly changing) 203498, 203547, 203904, and 205516; Ordinance 51-22; Ordinance 99-21; Division II of the Transportation Code; Article 29 of SF Police code, not to mention SFFD and SFMTA code and ordinances, and who knows what else. I would consider myself to be uncommonly knowledgeable about the shared spaces program, primarily from having been fanatical about keeping pace with the constantly changing Manual. This is exactly why the Manual exists; because we cannot possibly be expected to navigate all of that tangential code stemming from the umbrella the Shared Spaces program.

While I took the Manual as my primary workbook, I also often read and referenced Admin. Code 94a for clarification when I ran into a portion of the Manual that conflicted with a separate portion of that same manual. I did this because the current Code and authority regarding Shared Spaces flows from this underlying administrative code. It even states *within* the Shared Spaces DPW Orders that *"in the event of a conflict, the legislation (94a) shall control"* (Order 205516, §1). That in and of itself should negate this notion of compulsory removal for pausing operations, as that is not included in the Admin. Code.

4) Statement (4) is partially elaborated in Statement Section (1) above. However, another portion of what Greg was incorrect about in his email thread beginning on 8/22/22 was the sections of Code that he was citing. I pointed this out to him. He was citing language from DPW Order 203547. He later wrote that the *"Pandemic program was subject to multiple Orders, all of them reference adherence to previously issued docs as well as successor Orders for the program"*. That is false. Order 203904 ***"merged, replaced, and superseded the two previous orders"***, including Order 203547 which he quoted. After that, Order 205516 ***"replaced and superseded Order 203904"***. I see clear language in the successor orders saying that they replace their predecessors. I see no language saying that conflicting provisions of the predecessor orders remain intact.

5) I was given no formal notice to correct or comply with any conditions in advance of the 11/22/22 Notice of Violation. I was only given a compliance advisory listing issues that needed be cured by April 2023. Greg told me sardonically on our 12/2/22 call (11 days after I received the Notice of Violation) that I *"basically should have considered his emails from august as soft warnings"*. No. I cannot possibly be held accountable for what he is unilaterally and retroactively considering a "soft warning". I would have had no way to know that these were warnings; both because they did not follow the process for warnings illustrated in the Manual, and because he did not use the word "warning", or "notice", or anything else that would have implied a "soft warning".

6) There is a clear formal process for compliance and enforcement in the Manual (p.68-70). This includes samples of the forms that are to be used by Shares spaces, which are partially filled in and annotated to describe how we should read and react to these forms. This process shows first a compliance advisory form. The CA forms do not include penalties or fines. If the permit holder fails to comply with the CA in whatever made up time frame that Shared Spaces finds is adequate, then Shared Spaces can escalate to the next tier. The next tier would be a Compliance & Enforcement cover sheet, used in the event that the permit holder is not being responsive to Shared Spaces compliance notices, *and* is creating a "hazardous condition". The C&E cover sheet includes a separate column which gets filled with the dates by which the permit holder must comply. If the permit holder does not comply by the dates listed on the C&E cover sheet, then Shared Spaces can escalate again to a Correction Notice (CN) and finally a Notice of Violation (NOV). This is when the threat of administrative fines can begin. If the permit holder does not comply by the dates listed on the NOV, then they can be assessed fines under Admin. Code Sec. 100.5.

7) I have pointed out in Statement Section (1) and (4) some of the incorrect, inaccurate, misleading, and erroneous statements and directives transmitted from Shared Spaces. I will list some more below. Due to the fact that Shared spaces has a history of being mistaken, and because there is a very clear compliance process outlined in Manual (p.68-70) and elaborated on above in Statement Section (6), I am not able snap into action based on any casual suggestion or "soft warning". I have the right as a permit holder and member of the public to dispute the false statements and advocate for myself. A city representative can say anything they want in an offhand manor. If they put it in writing on a formal notice, CA, C&E cover sheet, or NOV, then they must back it up. It seems that Greg used "soft warnings" because he could not back up his suggestions. I will take no actions based solely on offhand comments and suggestions.

Here is another example of where Shared Spaces has been incorrect in regards to augmentation of my structure to comply with the new 2022 SFMTA directive to expand daylighting. I was emailed telling me that I had to remove one of my entire structures because it was too close to the intersection. When they explained this to me, they illustrated the issue with a drawing showing the parking space where the western most parklet resides as being only 13' from the crosswalk. This is false. I had to email back and forth with them several times to finally compel them to update their records to show that the western most parking space and thus parklet is actually 17' 3" from the crosswalk. If I had snapped into action based on the first email that I got from them I would have spent \$10,000 demolishing a portion of my parklets that cost me \$15,000 to build. A portion that generated \$2,280 per night / \$592,800 per year in revenue. That would not have been very good.

One more example would be on the formal Compliance Advisory that I received from Shared Spaces on 11/2/22. I will list some of the compliance issues that were on that CA, and respond to them in-line:

- 1) Blocked Crubramp-ADA
  - a. No. this is impossible. The closest portion of my parklet is over 17' from the nearest edge of the nearest curbramp.
- 2) Disruptive Levels Of Amplified Sound
  - a. No. this is impossible. To begin with, at the time that I received this notice I had not played any amplified sound at all for over two months. Beyond that, my amplified sound is regulated by my JAM permit. My landlords are not happy about the conditions of my JAM permit, but that does not make it non-compliant even when I did have amplified sound.
- 3) Sidewalk Diverters Needed – ADA
  - a. No. This is impossible. I had Sidewalk diverters to the correct specs in Manual p.11(a) et seq. I still have them. They were built in 2016 when I first got my café table and chairs permit.
- 4) Sidewalk Clear Path Of Travel – ADA
  - a. No. This is impossible. we have over 16' of clear path of travel. With the tables in place under our sidewalk tables and chairs permit, we still have over 12' of clear path of travel.
- 5) Visibility At Intersection Stop Signs Oncoming Traffic
  - a. No. this is impossible. Besides the fact that I do have visibility at the intersection, there is also no stop signs at this intersection.
- 6) Structure Blocks View 42 Inches
  - a. No. this is impossible. My parklets are see through plexiglass above 42" per the specs in the Manual. (see attached photos and video).

I hope you can understand from this how I have been absolutely forced to dispute what Shared Spaces is telling me, rather than trusting their accuracy.

8) On November 2<sup>nd</sup> I received the Compliance Advisory mentioned above via email from Shared Spaces. The very first line-item compliance issue listed is "Abandoned Parklet". It says within the advisory form itself "See below for issues that require immediate attention, as well as other issues that can wait until March 2023 should you desire to transition into the permanent program. Departments listed below may be in touch in the months ahead with additional items. **You will receive separate communication regarding timelines for the items listed below**". After reading that section I then reviewed the email from Shared Spaces to see if they communicated any timelines. The body of the email from Shared spaces states "Attached to this email is a Compliance Advisory for your site. The Compliance Advisory is a summary of ... issues that we have noted so far at your site. **These issues should be corrected by March 31, 2023...**" I realize that this email is in part a boiler plate response, but I responded back to this email and continued to get confirmation that I was accurate in my reading that I had until 3/31/23 to correct the issues. I wrote back on 11/21/22 to say that any of the relevant compliance issues were addressed in my Legislated Shared Spaces permit application (submitted in October) and that all would be corrected by 3/31/23. Shared Spaces responded back "Hi Aaron. Thanks for reaching out. I see your permit application for 1499 Valencia St from last month. Yes, please look out for follow-ups from our permitting team. Once your site plan and your application are complete and approved, we will...". That email thread continues for another 21 emails back and forth with Shared Spaces. In none of those 21 emails do they ask me or imply to me to take any corrective action immediately, including in regard to the first listed compliance issue "Abandoned Parklet". This undeniably tells me that I had no listed compliance issues to correct right away.

9) As noted above in Statement Section (8), I was told in writing by Shared Spaces on 11/2/22 that I had until 3/31/23 to correct the specific compliance issues that they listed. The very first compliance issue that they listed was "Abandoned Parklet". I dispute the allegation that the parklet was abandoned, in part because it does not fit the Shared Spaces criteria for abandonment, mentioned in Statement Section (13). Regardless of the accuracy of the

Compliance Advisory, Shared spaces cannot tell me on 11/2/22 that I have 4 months to correct a compliance issue, and then turn around and tape a Notice of Violation on my door only 3 weeks later for not correcting that very same compliance issue. Further, Shared Spaces can *especially* not do that without first providing me with a Compliance and Enforcement Cover Sheet, giving me the opportunity to correct an issue.

10) The fact that Parklets can pause operations or be non-operational for at least *some* amount of time is undeniable. The Manual, Admin Code 94a, and the executed Shared Spaces permit do not prohibit this. The Manual however on p.65 *does* state that "If your business changes ownership, you will either need to remove your parklet **or transfer the permit to the new owner**". If you think I am grasping at straws here, I'm not. When I was contemplating closure, I spent a lot of time combing through the Manual to make sure I would not be running afoul of the rules. Since there is no portion of the Manual that says that I cannot close, I took the change of ownership section on p.65 as the affirmative confirming that it was OK to be non-operational as long as there was some legitimate business action occurring. There can be no possible version of reality where a change of ownership occurs and there is no lapse in operation in the interim. One business will cease operations, the new business will eventually re-activate operations. I have opened 3 restaurants in San Francisco. I know many other operators who have opened restaurants here, and an even longer list of employees, contractors, consultants, etc... who have been adjacent to restaurant openings. Industry standard for a change of ownership, re-concept, and re-opening would be 6-12 months. Some do it faster. I've done it in 3 months, but that is the exception, not the rule. There are plenty of other circumstances where a business would be non-operational for *some* period of time. Some close for 1-3 months for renovations or re-concepts, some close for a month or longer due to covid outbreaks (we did in December 2021), some close for extended vacations, the list goes on. There is nothing that prohibits these closures or operational pauses, and there is no history of DPW taking enforcement action against these permit holders. What this leaves us with is the interpretation that "yes" permit holders can be closed for some amount of time, but "no", that amount of time has not been defined anywhere in the Code. The only place where I see some sense of how much time a business can be non-operational is in the 12/22/22 Notice of Revocation Where Robin Abud describes abandonment. It says (in part) when the parklet "*has not been actively used ... as intended for an **extended** period of time*". The fact alone that he would use the word "extended" to describe an amount of time that a business can be non-operational means that the business can be non-operational for a while, or a long time, or a few months, or whatever amount of time would pass between the day the door shuts, and the day that Shared Spaces decides that it has become an "extended period of time". It means undeniably that the day a business closes or announces that they will close they have not crossed some line of no return where they have no choice but to remove their parklet.

11) There are 4 categories for removal listed in the Manual (p.65). I do not meet any of those criteria. These 4 categories are the *only* causes for removal in the entire Manual.

- 1) **"self-initiated"**. *"if for some reason you decide you no longer want to keep your parklet, you are responsible...for removing it"*.
  - I have not decided that I no longer want to keep the permit. This clearly leaves the decision up to the permit holder.
  - on the Shared Spaces website under "end your shared space" it says *"If you don't want to continue using your current Shared Space, you can follow the steps to let us know"*. This would further indicate that the decision to stop using the space would be up to the permit holder.
- 2) **"Streetscape improvements"**
  - This obviously does not apply
- 3) **"Public safety emergencies"**
  - This also obviously does not apply
- 4) **"Failure to maintain"**. It states *"Parklet operators who fail to properly and sufficiently maintain the cleanliness, safety, and accessibility of their parklet **may** be subject to violations and fines. **If maintenance issues are not resolved, parklet operators may be required by Public Works to remove the parklet at their own expense**"*.
  - I have been maintaining the parklet and will continue to do so. Unfortunately due to rampant street crime, maintaining that space extremely difficult. It was difficult when AL's Place was open serving dinner, and it is difficult now. Here are some things that I do to maintain the parklets:
    - (a) We have contracted "SF Giant Sweep" to come by 2x per week and fully clean both the sidewalks as well as the interior of the parklets. I also clean the area myself.
    - (b) We have retained our pest control from Crane who keep up on warding off pests.
    - (c) I personally check the space out multiple times a week to make sure things are OK. Often we have people who try to build encampments in and around it. Every time this occurs, I work immediately with the SFPD to move these along, and DPW to clear the debris left

from the encampments. This has always been a problem. The frequency has not changed since August 2022.

- (d) I have to paint over graffiti about once every week or two, after it builds up. That is how it was when we were open, and that is how it is now. There has been no change because graffiti occurs in the middle of the night; not during then evening when guests and staff would be there if we were serving the public. I do not invite the graffiti.
- (e) All together I pay roughly \$15,000 a month for costs associated with my premises and its upkeep, including the parklets. I do this to keep everything above board and maintained. I would not be able to retain the parklets without doing these things. Some of those costs are:
  - (1) 9k in rent every month, without which I would not have this parklet
  - (2) General liability insurance listing and indemnifying the city
  - (3) Sidewalk shared spaces permit fees
  - (4) Internet and electricity for security systems and cameras for the parklets
  - (5) Pest control for the parklets
  - (6) Weekly cleaning of the inside and outside of the parklets as well as the sidewalks around them
  - (7) Painting the parklets
  - (8) City, state, and federal taxes associated with the entity that owns the business and holds the city of San Francisco licenses
  - (9) JAM permit
  - (10) ABC license, including for the parklet, which raises insurance costs
  - (11) Physical maintenance and construction repairs to the structure (\$3,000 in December alone).

**12)** Ordinance 51-22 narrows Shared Spaces enforcement to only public safety, accessibility, and **abandonment**. The notion of abandonment is central to the current issue with my parklet. The only place in any Code related to Shared Spaces that you will find the word “Abandoned” is in Ordinance 51-22. While the word “abandoned” is used 10 times in that ordinance, there is no criteria describing the term “abandoned” in the context of DPW enforcement. Though there are no criteria written for determining a structure has been abandoned, there *does* seem to me to be criteria clearly *implied* in Ordinance 51-22. See below Section 2, §(d), (f), and (g).

### **Ordinance 51-22 Section 2. General Background and Findings.**

**§(d):** *Shared Spaces has been, and continues to be, a lifeline for small businesses and the workers they employ across San Francisco. San Francisco has led the nation among major cities instituting effective responses to the COVID-19 pandemic, and programs like Shared Spaces have transformed underutilized space in the public realm for small business recovery, arts, and other activities.*

**§(f):** *But implementation of the Shared Spaces program has been characterized by **uneven enforcement**. While the early days of the program saw small business owners utilizing any resources they had on hand to cordon off adjacent sidewalks and curbside parking lanes in order to continue business operations, the City has since created extensive regulations that include accessibility and life safety requirements to balance the needs of small businesses with other public health and safety needs, including regulations seeking to ensure compliance with the Americans With Disabilities Act. While some of these requirements were the subject of public hearings and approval by legislative bodies, **an overwhelming number of them were crafted administratively by departments with little input from small business owners, disability advocates, or other members of the public. The result has been a confusing web of regulations, the sources of which are frequently hard to identify.***

**§(g):** *Until small businesses are capable of returning to pre-pandemic levels of sales and service, the assessment of fines and fees related to the Shared Spaces program inhibits their ability to effectively participate in that recovery. The City and all stakeholders will **benefit from the use of alternative means of bringing small businesses into compliance with the regulations, and to exercise flexibility in the implementation of existing regulations** in accordance with public health and safety considerations. The assessment of administrative fines should be limited to enforcing accessibility and life safety requirements necessary for people with disabilities or emergency responder personnel, ensuring visibility (daylighting) at intersections identified in the Vision Zero High-Injury Network, and requiring removal of any abandoned structures.*

The goal of the ordinance is evident. The gist being a) restaurants are still struggling so be nice to them, b) the Shared Spaces Manual as well as the city’s instructions and communications have been unclear and confusing, so

super-duper be nice to them, and c), there are some things that are *such* urgent health, safety, and accessibility issues that you have to go ahead and not be nice to them. The implication from the tone of this ordinance is that an Abandoned structure is dangerous and hazardous. I would be the first to agree with that. When permit holders actually Abandon their structures, let them fall into disrepair, let them get over-run with pests, full of trash and falling apart, this is a serious health hazard. That could not be any further from an accurate description of my parklets. Let's not be coy; we all know what we think of when we hear of an abandoned child, an abandoned car, and abandoned house, etc. Abandoned implies that someone evading (often illegally) reasonability for upkeep, safety, and wellbeing of their wards.

**13)** I began asking Greg for any of the criteria for deeming a structure "Abandoned" on 11/22/22. I asked this repeatedly and was scoffed at in writing and verbally. Finally, on 12/22/22, in the Notice of Revocation, Robin Abud wrote the Shared Spaces criteria for an abandoned structure (he has still not told me where this criteria is found). The Notice of Revocation states "*A Shared Space is classified as abandoned when it has not been actively used and/or maintained as intended for an extended period of time, and the permittee has not responded to multiple communications from the City to fix the problem(s)*". I have not failed to maintain my parklet as intended and have received no warnings that I was not maintaining it as intended. If I had received warnings that I was not maintaining my parklet as intended, I would have immediately responded to the city to fix the problem. Notwithstanding the fact that an "extended period of time" is nowhere defined, my parklets still do not meet the criteria for abandonment.

**14)** DPW cannot enforce for non-operation alone pre-April 2023, provided the structure is being maintained and not Abandoned. Ordinance 51-22 does not allow for it, as illustrated above in Statement Section (12). This position is further supported by Statement Section (13).

**15)** I have continually maintained my parklets per p.64 and p.65 of the manual, Order 205516, Ordinance 99-21, and Admin. Code 793.3. I supervised their maintenance going back to the day they were built, and through to the current day. My maintenance practice has not changed at any time. They are maintained just as well as they were when we were serving guests. I have listed many of the steps and costs of maintenance in Statement Section (11). Order 205515 has the same language as the Manual p.65 for failure to maintain (noted in Statement Section 11.4). DPW had any number of opportunities to give me notice digitally or physically telling me that I needed to maintain better. Greg wrote that there were 10 complaints from the public about my maintenance. That is 10 times that the complainant could have contacted me, and 10 times that DPW could have contacted me to resolve the problem (if there actually was a problem, see Statement Section 16). Ordinance 51-22 directs "*The City ... will benefit from the use of alternative means of bringing small businesses into compliance with the regulations, and to exercise flexibility in the implementation of existing regulations*". The city has no directive to force me to demolish my property due to maintenance without first exercising less aggressive solutions.

**16)** DPW gave me no notice of any type of any maintenance issues. They came out on 11/22/22 to follow up on a complaint from the public. We have a very long and searchable history of frivolous complaints from neighbors' who hated AL's Place and wanted it gone. Some if not all of these neighbors have my cell phone number and could have texted me to complain, as they have dozens of times in the past. If they did not have my number they could have gotten my email from the AL's Place website, contacted me via social medial, slipped a letter through our mail slot, or simply taped friendly note on our door. I always react and respond quickly to resolve any legitimate neighbor complaints.

When Fady came out on 11/22/22 it happened to be a bad time for build up of graffiti. I have only seen one photo, it is included in my Notice of Violation, as well as my Notice of Revocation. It is a photo taken from the south side of 26<sup>th</sup> street, facing the back side of my parklets. It does not show the other three sides of the parklets, around them, or inside of them. It only shows graffiti on the street facing side, and it shows a few of the clear plexiglass panels painted over. The site condition that they found was an isolated, temporary, and abnormal situation. When my main contractor went to paint over the graffiti the last time prior to Fady coming out, instead of painting only the graffiti on the plywood walls, he also painted the graffiti on the Plexiglass as well. This was a mistake and I have since spent \$3,000 replacing the panels. The amount of graffiti that is seen in the photo could understandably look like it had built up over three or more months while I was failing to maintain. That would be false. The entire parklets can be covered from one side to the other in a matter of a week or two. That is how it has always been. To make matters worse, everyone was out sick in mid November.

My 2 year old daughter was out sick beginning in October and continuing for two weeks in November with a cold that lead into an infection in both ears; I got sick from her which turned into laryngitis and I completely lost my voice; my pregnant Wife was in Europe on business until mid November, and came back sick with Covid while my daughter and I were still barely turning the corner. To make matters even worse, my contractor who normally handles painting,

maintenance, and repairs of the parklets, was out sick for most of the month of October and all of November. I can show proof of all of this if that is actually what they city requires. The level of graffiti may have become a little worse than normal during that window where we were all sick. But that is not an accurate representation of the normal state of the parklets. And it is not grounds for a Notice of Violation or removal.

**17)** Ordinance 51-22 says in Section 2 §(b) that the purpose of the Pandemic Shared Spaces program is economic recovery. Order 203547 in Section (l) "Purpose" says the same. The Manual on p.68 clarifies that my parklets are still under the Pandemic Shares program, and that they will not be under the Legislated Shared Spaces program until April 2023. The Manual and elsewhere make it clear that in the Legislated Shared Spaces program the purpose had been vastly broadened to balance the needs of multiple elements of the public, rather than prioritizing economic recovery. This balanced approach is intended to gradually take effect, culminating in the new program in April 2023. Greg continued to insist on our 12/2/22 call that my business was not important, and that the needs of the public use of the right of way was far more important than my parklet. He said that because I was not actively serving food to the public in the parklets I was robbing them of their enjoyment of the public right of way. While I disputed this, I nonetheless offered to re-open immediately if that would solve the problem. Re-opening quickly is not a sound business strategy, and not what I wanted to do, but if that is what it was going take to appease the city, I would do it. He repeated for the 10<sup>th</sup> or so time on that call that "nothing I could possibly say to him would change the directive for me to remove my parklet", and the call eventually ended. I followed through with my commitment to re-open. I officially re-opened on 12/5/22 (the Monday after our Friday call) serving AL's Snacks and drinks. I offered this full service in both the dining room and the parklets. I was down there doing this myself until the time that Shared Spaces revoked my permit (12/22/22). I have been told by others that Greg scoffed at my re-opening, saying something along the lines of that because I did not have reservations listed on my website, I was not open "enough". Greg attempted to formally disavow my attestation of re-opening by emailing on 12/21/22 that his DPW enforcement team had never seen me open. He memorialized this in an email while being fully aware of the fact that his team had not been to AL's Place since 11/22/22, and I had re-opened on 12/5/22, so of course they did not see me open. This is an example of the type of conduct that I have been enduring from certain members of the Shared Spaces team. This conduct runs in absolute conflict to the intent of the Shared Spaces program. Even the Compliance Advisory template says "*We are eager to provide you with as much advice as possible*". Out of all of the city agencies I have worked with over the last 11 years in San Francisco, I have never encountered conduct and behavior like I have from the Shared Spaces team. From SFDPH to DBI, they may not be always easy to work with, but they don't treat you as an enemy, and have always been willing to work together and give their advice to find a solution to a problem. The Shared Spaces team has treated me as an adversary throughout this process. Their contempt tells me that the simple fact that I have been disputed their decisions has offended and enraged them. This is not how it should be, and this is not OK. This is why I am here today, advocating for myself, and advocating for other permit holders in the mission community who may be underserved, underrepresented, and marginalized.

I have included a handful of photos of other parklets around the mission. Some are actually Abandoned and covered in graffiti. Some are fully in operation but covered in graffiti. I would encourage DPW to find a way to work with the community to help improve these spaces, leave enforcement to the legitimately hazardous spaces, and leave the aggression at the door. Us small business owners are the fabric of America, and anchors in our communities. We are not the enemy.

**18)** In the event that permit revocation is upheld I would request of the hearing officer or the DPW Director to grant a reasonable amount of time to execute the removal. In the 11/22/22 NOV I was given 14 days to remove the parklets and restore the area to its prior conditions. That is not reasonable, nor feasible. I assume that 14 days window was based off some policy concerning administrative fines, stemming from Admin Code 100.5. I think it was misapplied when used to set the timeline for the completion of a construction project. Giving 14 days for a permit holder to *commence* construction is reasonable, not 14 days to *complete* construction.

I have contracted and ran several commercial construction projects in San Francisco. It would likely take 14 days just to pull the permits needed for the removal, block parking spaces for construction vehicles, and acquire a large curbside construction debris container. For a roughly 60-foot-long structure like ours, which was well designed and built to last decades, it would at the very least take 3-4 workers 3 weeks to complete the demolition, removal, and restoration of the parklet area. It will also take time to line up a reputable, licensed, insured contractor to do the job. I have found that most contractors in the city currently are booked 3 months out. Let's just imagine for a moment that I could some how get a team to begin work in a month, we are still talking 6-8 weeks for the job to be completed.

In light of this I request that the hearing officer or DPW Director work with me to set a timeline for completion that is actually achievable. Greg wrote in his 12/29/22 email that "*the purpose (of the fines) is to induce compliance (of*

*removal*)." If removal has commenced, there is no further inducement required. I feel that 3 months is a reasonable timeline, as long as I can show that in good faith, I am doing everything possible to complete the project even quicker.

**19)** In the event that permit revocation is upheld, I would like to request Judicial review. I see that this is allowed by Admin Code 100.5, which is the code that Greg cited when attempting to explain the fines he was assessing. Please let me know the next steps in this process.

**20)** I applied for a Legislated Shared Spaces permit in October 2022. Is the directive from DPW really that I should demolish and remove my existing parklet, then when I receive my new Legislated Shared Spaces permit, I re-build the same parklet in the same area? I have trouble seeing how that makes sense, and how it would benefit the City and all stakeholders.