

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. (415) 554-5184  
Fax No. (415) 554-5163  
TDD/TTY No. (415) 554-5227

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## MEMORANDUM

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Date: February 21, 2023  
To: Planning Department / Commission  
From: Erica Major, Clerk of the Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 230164  
Planning Code - Non-Conforming Public Parking Lots in the Mission Street NCT District

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- ☒ California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - ☒ Ordinance / Resolution
  - ☐ Ballot Measure
- ☒ Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - ☐ General Plan
  - ☒ Planning Code, Section 101.1
  - ☐ Planning Code, Section 302
- ☐ Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- ☐ General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- ☐ Historic Preservation Commission
  - ☐ Landmark (*Planning Code, Section 1004.3*)
  - ☐ Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - ☐ Mills Act Contract (*Government Code, Section 50280*)
  - ☐ Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to Erica Major at [Erica.Major@sfgov.org](mailto:Erica.Major@sfgov.org).

[Planning Code - Non-Conforming Public Parking Lots in the Mission Street NCT District]

**Ordinance amending the Planning Code to allow continued use of existing shared spaces in specified public parking lots in the Mission Street Neighborhood Commercial Transit (NCT) District without triggering abandonment of the underlying vehicular parking use; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

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 ~~strikethrough 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 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.). Said determination is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board affirms this determination.

(b) On \_\_\_\_\_, 2023, the Planning Commission, in Resolution No. \_\_\_\_\_, adopted findings that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts these findings as its own. A copy of said Resolution

1 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is  
2 incorporated herein by reference.

3 (c) The Emergency Shared Spaces Program (the “Emergency Program”), as  
4 established in Administrative Code Chapter 94A, has proven that small business owners can  
5 safely and appropriately activate outdoor areas adjacent to their brick-and-mortar  
6 establishments for food service and other uses. These activations have been, and continue to  
7 be, critical for small business retention and stabilization in the City’s neighborhoods, as well  
8 as retention of jobs and tax revenues. After the Emergency Program terminates in 2023, such  
9 outdoor activations, where possible, should continue under the appropriate permitting  
10 mechanisms to ensure the continued economic and social benefits that these activations  
11 provide.

12 (d) The Board of Supervisors finds that this ordinance is necessary to enable  
13 neighborhood business owners in the Mission Street Neighborhood Commercial Transit  
14 Zoning District (“Mission Street NCT”), under limited circumstances, to continue Shared  
15 Spaces, such as patios, that were initially authorized under the Emergency Program for  
16 certain parking lots on private property. The Board of Supervisors recognizes the economic,  
17 health, safety, and recreational contributions that Shared Spaces have provided to  
18 commercial enterprises, neighborhood businesses, and City residents and visitors. With this  
19 ordinance, the Board intends to enable business owners in the Mission Street NCT to  
20 continue operating Shared Spaces in certain parking lots in the same manner initially  
21 authorized under the Emergency Program.

22  
23 Section 2. Article 1.7 of the Planning Code is hereby amended by revising  
24 Section 183, to read as follows:

25 **SEC. 183. NONCONFORMING USES: DISCONTINUANCE AND ABANDONMENT.**

1           (a) **Discontinuance and Abandonment of a Nonconforming Use, Generally.**

2   Whenever a nonconforming use has been changed to a conforming use, or discontinued for a  
3   continuous period of three years, or whenever there is otherwise evident a clear intent on the  
4   part of the owner to abandon a nonconforming use, such use shall not after being so  
5   changed, discontinued, or abandoned be reestablished, and the use of the property thereafter  
6   shall be in conformity with the use limitations of this Code for the district in which the property  
7   is located. Where no enclosed building is involved, discontinuance of a nonconforming use for  
8   a period of six months shall constitute abandonment.

9           \* \* \* \*

10           **(d) Discontinuance or Abandonment of a Public Parking Lot in the Mission Street NCT**

11   **District.** *Notwithstanding subsection (a) of this Section, when less than 25% of the parking spaces*  
12   *within a legally established, nonconforming Public Parking Lot located in the Mission Street NCT*  
13   *Zoning District is converted to an Outdoor Activity Area for a separate use, such conversion does not*  
14   *constitute a discontinuance or abandonment of that portion of the Public Parking Lot use. However, if*  
15   *the remaining Public Parking Lot use is discontinued or abandoned, then the portion converted to*  
16   *Outdoor Activity Area shall also be deemed to be discontinued or abandoned.*

17  
18           Section 3. Effective Date. This ordinance shall become effective 30 days after  
19   enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
20   ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
21   of Supervisors overrides the Mayor's veto of the ordinance.

22  
23           Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
24   intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
25   numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the “Note” that appears under the official title of the ordinance.

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: /s/  
JOHN D. MALAMUT  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Planning Code - Non-conforming Public Parking Lots in the Mission Street NCT District]

**Ordinance amending the Planning Code to allow continued use of existing shared spaces in specified public parking lots in the Mission Street Neighborhood Commercial Transit (NCT) District without triggering abandonment of the underlying vehicular parking use; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

### **Existing Law**

In Administrative Code Chapter 94A, the City established the Shared Spaces program that allowed for activation of the public right-of-way and private property with parklets, patios, and similar structures associated with brick and mortar businesses. The City expanded this program during the Covid emergency and now is terminating the emergency provisions and providing an avenue for applicants to obtain new permits that meet current requirements. Planning Code Section 183 addresses non-conforming uses and includes standards that specify when the underlying use is discontinued or abandoned. The Mission Street Neighborhood Commercial Transit District has at least one non-conforming public parking lot that contains a Shared Spaces patio, characterized as an Outdoor Activity Area, which was installed during the Shared Spaces emergency program.

### **Amendments to Current Law**

This legislation would amend Planning Code Section 183 to clarify that in the Mission Street Neighborhood Commercial Transit District a portion of a non-conforming public parking lot occupied by a Shared Spaces patio shall not be treated as abandoned if the Shared Space use continues. The ordinance would make various findings, including environmental findings, General Plan findings, and Planning Code Section 101.1 priority policy findings.

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## Introduction Form

(by a Member of the Board of Supervisors or the Mayor)

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- ☐ 2. Request for next printed agenda (For Adoption Without Committee Reference)  
(Routine, non-controversial and/or commendatory matters only)
- ☐ 3. Request for Hearing on a subject matter at Committee
- ☐ 4. Request for Letter beginning with "Supervisor [ ] inquiries..."
- ☐ 5. City Attorney Request
- ☐ 6. Call File No. [ ] from Committee.
- ☐ 7. Budget and Legislative Analyst Request (attached written Motion)
- ☐ 8. Substitute Legislation File No. [ ]
- ☐ 9. Reactivate File No. [ ]
- ☐ 10. Topic submitted for Mayoral Appearance before the Board on [ ]

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- ☐ Small Business Commission    ☐ Youth Commission    ☐ Ethics Commission
- ☒ Planning Commission    ☐ Building Inspection Commission    ☐ Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- ☐ Yes    ☐ No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Ronen

Subject:

[Planning Code - Non-conforming Public Parking Lots in the Mission Street NCT District]

Long Title or text listed:

Ordinance amending the Planning Code to allow continued use of existing shared spaces in specified public parking lots in the Mission Street Neighborhood Commercial Transit District without triggering abandonment of the underlying vehicular parking use; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1.

Signature of Sponsoring Supervisor: [s/ Hillary Ronen]