

File No. 230164 Committee Item No. 1  
 Board Item No. 12

**COMMITTEE/BOARD OF SUPERVISORS**

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Committee: Land Use and Transportation Committee Date May 22, 2023

Board of Supervisors Meeting Date June 6, 2023

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Completed by: Erica Major Date May 18, 2023  
 Completed by: Erica Major Date May 23, 2023

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

2

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

9

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

13

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

15

16 Section 1. Findings.

17

(a) The Planning Department has determined that the actions contemplated in this  
18 ordinance comply with the California Environmental Quality Act (California Public Resources  
19 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
20 Supervisors in File No. 230164 and is incorporated herein by reference. The Board affirms  
21 this determination.

22

(b) On April 20, 2023, the Planning Commission, in Resolution No. 21302, adopted  
23 findings that the actions contemplated in this ordinance are consistent, on balance, with the  
24 City’s General Plan and eight priority policies of Planning Code Section 101.1. The Board

25

1 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the  
2 Board of Supervisors in File No. 230164, and is 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

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
2 additions, and Board amendment deletions in accordance with the “Note” that appears under  
3 the official title of the ordinance.  
4

5 APPROVED AS TO FORM:  
6 DAVID CHIU, City Attorney

7 By:  /s/  
8 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.

BOARD of SUPERVISORS



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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).

CEQA clearance under Addendum #2 to San Francisco Better Streets Plan  
Project Mitigated Negative Declaration, April 18, 2021 Planning Department  
Case No. 2021-003010ENV (addendum to Case No. 2007.1238E)

03/02/2023

A handwritten signature in black ink, appearing to be "Erica Major", written over the date.



May 2, 2023

Ms. Angela Calvillo, Clerk  
Honorable Supervisor Ronen  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-001585PCA:  
Non-Conforming Public Parking Lots in the Mission Street NCT District  
Board File No. 230164

**Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Ronen,

On April 20, 2023, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Ronen that would amend Planning Code Section 183. At the hearing the Planning Commission recommended approval.

The proposed amendments are covered under Addendum #2 to San Francisco Better Streets Plan Project Mitigated Negative Declaration dated April 18, 2021. See Planning Department Case No. 2021-003010ENV (addendum to Case No. 2007.1238E).

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

Aaron D. Starr  
*Manager of Legislative Affairs*



cc: John Malamut, Deputy City Attorney  
Ana Herrera, Aide to Supervisor Ronen  
Erica Major, Office of the Clerk of the Board

**Attachments :**

Planning Commission Resolution

Planning Department Executive Summary



# PLANNING COMMISSION RESOLUTION NO. 21302

**HEARING DATE: APRIL 20, 2023**

**Project Name:** Non-Conforming Public Parking Lots in the Mission Street NCT District  
**Case Number:** 2023-001585PCA [Board File No. 230164]  
**Initiated by:** Supervisor Ronen / Introduced February 14, 2023  
**Staff Contact:** Veronica Flores, Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND 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.**

WHEREAS, on February 14, 2023 Supervisor Ronen introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 230164, which would amend 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;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 20, 2023; and,

WHEREAS, the proposed Ordinance is covered under Addendum #2 to San Francisco Better Streets Plan Project Mitigated Negative Declaration dated April 18, 2021. See Planning Department Case No. 2021-003010ENV (addendum to Case No. 2007.1238E); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

## Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Ordinance supports a small business and the continuation of their Outdoor Activity Area.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

##### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

#### OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

**RECREATION AND OPEN SPACE ELEMENT**

**OBJECTIVE 1**

**ENSURE A WELL-MAINTAINED, HIGHLY UTILIZED, AND INTEGRATED OPEN SPACE SYSTEM.**

Policy 1.11

Encourage private recreational facilities on private land that provide a community benefit, particularly to low and moderate-income residents.

**OBJECTIVE 5**

**ENGAGE COMMUNITIES IN THE STEWARDSHIP OF THEIR RECREATION PROGRAMS AND OPEN SPACES.**

Policy 5.3

Facilitate the development of community-initiated or supported open spaces.

*The proposed Ordinance supports a pandemic Shared Space to continue in the Mission Street NCT. This Ordinance supports the Commerce and Industry Element's goal of retaining commercial activity that will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of recreational activities available to San Franciscans. Additionally, this Ordinance aligns with the Recreation and Open Space Element's goal of maintaining open spaces on private land. Further, the Recreation and Open Space Element also strives to engage communities to ensure their open space needs are being met. This Outdoor Activity Area could serve as a recreational area for local residents aligning with various goals of the General Plan.*

**Planning Code Section 101 Findings**

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail. The proposed Ordinance would support a local, small business and their efforts to establish an Outdoor Activity Area.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 20, 2023.

*Laura Lynch* **Laura C Lynch** Digitally signed  
by Laura C Lynch  
Date: 2023.04.28  
11:31:02 -0700  
Laura Lynch  
Acting Commission Secretary

AYES: Braun, Diamond, Imperial, Koppel, Moore, Tanner

NOES: None

ABSENT: Ruiz

ADOPTED: April 20, 2023

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# EXECUTIVE SUMMARY

## PLANNING CODE TEXT AMENDMENT

**HEARING DATE:** April 20, 2023

**90-Day Deadline:** May 22, 2023

**Project Name:** Non-Conforming Public Parking Lots in the Mission Street NCT District  
**Case Number:** 2023-001585PCA [Board File No. 230164]  
**Initiated by:** Supervisor Ronen / Introduced February 14, 2023  
**Staff Contact:** Veronica Flores, Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**Recommendation:** Approval

### Planning Code Amendment

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.

#### The Way It Is Now:

Public Parking Lots are not permitted within the Mission Street NCT and thus considered legal, nonconforming. If such Public Parking Lots are closed, they would be considered abandoned.

#### The Way It Would Be:

When less than 25% of the parking spaces of a legally established, nonconforming Public Parking Lot located in the Mission Street NCT is converted to an Outdoor Activity Area for a separate use, that portion of the Public Parking Lot would not be considered discontinued or abandoned. However, if the remaining Public Parking Lot use is discontinued or abandoned, then the portion converted to an Outdoor Activity Area could not convert back to a Public Parking Lot.



## Background

The City implemented a Shared Spaces pandemic program to respond to the economic downturn of the COVID-19 pandemic to support locally owned small businesses. In addition to stabilizing neighborhood commercial corridors, merchants, and jobs, the Program has contributed positively to walkability, social and psychological wellbeing during the COVID-19 pandemic. Due to its widespread success throughout the city, legislation was passed in July 2021 to transition the Shared Spaces program from an emergency response into a permanent program through and after the pandemic.<sup>1</sup> Under the legislated Shared Spaces program, the Planning Department reviews Shared Spaces permits for projects located on private property, including those on parking lots.

The Casements Bar applied for a CUA for an Outdoor Activity Area last summer but withdrew the application due to the property owner's concern about being able to use this as a Public Parking Lot again in the future. Supervisor Ronen introduced this Ordinance to balance out the opportunity for the Outdoor Activity Area with the property owner's concerns to be able to revert to a Public Parking Lot if and when the Outdoor Activity Area closes.

## Issues and Considerations

### Shared Spaces

The Shared Spaces pandemic program was created to boost the economy and support locally owned small businesses. In total, there were over 2,000 pandemic Shared Spaces permit holders. The most prolific Shared Spaces included outdoor tables and chairs for restaurants. For many restaurants, this outdoor dining was the only way to stay open during the pandemic when indoor dining was limited or not permitted at all.

The Shared Spaces pandemic program was so successful it was extended to March 31, 2023, with the intent of legislating a permanent program. The permanent Shared Spaces program, effective April 1, 2023, streamlines permit approvals, requiring the City to review and issue permit decisions for the program within 30 days of receiving a complete application. The permanent program also seeks to encourage arts and culture, and better balance commercial activities with public space and transportation demands of the recovering economy.

There are four types of Shared Spaces, including the sidewalk, parking lane, roadway, and private property. Shared Spaces on private property (including those in rear yards, vacant lots, parking lots, and patios) are typically not included as part of the permanent Shared Spaces program or the timeline extension.<sup>2</sup> Therefore, such Shared Spaces need to follow the regular process as required under the Planning Code. One example of such Shared Space on private property includes the outdoor patio at Casements Bar (2351 Mission Street). Casements Bar is located within the Mission Street Neighborhood Commercial Transit District (NCT), which requires a Conditional Use Authorization (CUA) for an Outdoor Activity Area at the rear of the property to continue this Shared Space.

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<sup>1</sup> [Ordinance 99-21, Board File 210284](#)

<sup>2</sup> The rare exception includes City-owned parcels.

## Nonconforming Public Parking Lots

The Public Parking Lot located at 2351 Mission Street is considered legal, nonconforming because such use is not permitted within the Mission Street NCT. Nonconforming uses can remain in place if they are not intensified; however, if they are abandoned, there is no path to establish that nonconforming use again.

| If a nonconforming use is abandoned, it cannot be reestablished at the property.

In the case of the Public Parking Lot at 2351 Mission Street, they can continue to operate there if the use is not abandoned; however, if another use is established at the property, the Public Parking Lot use is considered abandoned. Under the proposed Ordinance, when up to 25% of a Public Parking Lot in the Mission Street NCT is used as an Outdoor Activity Area, the underlying Public Parking Lot use would not be considered discontinued or abandoned. Further, if the remaining Public Parking Lot is abandoned, then the portion converted to an Outdoor Activity Area could not convert back to a Public Parking Lot. The goal of the proposed Ordinance is to easily revert to Public Parking Lot again if the Outdoor Activity Area is abandoned.

## General Plan Compliance

The proposed Ordinance supports a pandemic Shared Space to continue in the Mission Street NCT. This Ordinance supports the Commerce and Industry Element's goal of retaining commercial activity that will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of recreational activities available to San Franciscans. Additionally, this Ordinance aligns with the Recreation and Open Space Element's goal of maintaining open spaces on private land. Further, the Recreation and Open Space Element also strives to engage communities to ensure their open space needs are being met. This Outdoor Activity Area could serve as a recreational area for local residents aligning with various goals of the General Plan.

## Racial and Social Equity Analysis

The proposed amendments cannot be directly tied to a negative or positive impact in advancing the City's racial and social equity. There is not enough data to support the claim for the small number of businesses that it will affect.

## Implementation

The Department has determined that this ordinance will not impact our current implementation procedures.

## Recommendation

The Department recommends that the Commission *approve* the proposed Ordinance and adopt the attached Draft Resolution to that effect.

## Basis for Recommendation

The Department supports the overall goals of this Ordinance because it supports the continuation of an Outdoor Activity Area for a local, small business. Casements Bar set up tables and chairs in the rear parking lot to help

attract customers during the COVID-19 pandemic. This was one of the primary reasons they were able to stay open during the pandemic and hope to continue to do so in the future. This Ordinance builds on the success of the Shared Spaces pandemic program. In this case, Casements Bar does not qualify for the legislated Shared Spaces program and needs to establish an Outdoor Activity Area through a CUA. The Ordinance helps facilitate this process by garnering the property owner's support for the proposed Outdoor Activity Area.

## Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

## Environmental Review

The proposed amendments are covered under Addendum #2 to San Francisco Better Streets Plan Project Mitigated Negative Declaration dated April 18, 2021. See Planning Department Case No. 2021-003010ENV (addendum to Case No. 2007.1238E).

## Public Comment

The Planning Department has received one public comment regarding the proposed Ordinance from Chris Hastings and Gillian Fitzgerald, the business owners of Casements. They described the desire to continue to operate the outdoor patio space as previously permitted by the Shared Spaces pandemic program. They shared that this patio space helped the business thrive amidst the COVID-19 pandemic and that it also helped prevent another closed storefront in the immediate vicinity.

### Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 230164
- Exhibit C: Letter of Support



# PLANNING COMMISSION DRAFT RESOLUTION

**HEARING DATE: April 20, 2023**

**Project Name:** Non-Conforming Public Parking Lots in the Mission Street NCT District  
**Case Number:** 2023-001585PCA [Board File No. 230164]  
**Initiated by:** Supervisor Ronen / Introduced February 14, 2023  
**Staff Contact:** Veronica Flores, Legislative Affairs  
veronica.flores@sfgov.org, 628-652-7525  
**Reviewed by:** Aaron D Starr, Manager of Legislative Affairs  
aaron.starr@sfgov.org, (628) 652-7533

**RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND 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.**

WHEREAS, on February 14, 2023 Supervisor Ronen introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230164, which would amend 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;

WHEREAS, The Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on April 20, 2023; and,

WHEREAS, the proposed Ordinance is covered under Addendum #2 to San Francisco Better Streets Plan Project Mitigated Negative Declaration dated April 18, 2021. See Planning Department Case No. 2021-003010ENV (addendum to Case No. 2007.1238E); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

## Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Ordinance supports a small business and the continuation of their Outdoor Activity Area.

## General Plan Compliance

The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

### COMMERCE AND INDUSTRY ELEMENT

#### OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

##### Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

#### OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

##### Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

**RECREATION AND OPEN SPACE ELEMENT**

**OBJECTIVE 1**

**ENSURE A WELL-MAINTAINED, HIGHLY UTILIZED, AND INTEGRATED OPEN SPACE SYSTEM.**

Policy 1.11

Encourage private recreational facilities on private land that provide a community benefit, particularly to low and moderate-income residents.

**OBJECTIVE 5**

**ENGAGE COMMUNITIES IN THE STEWARDSHIP OF THEIR RECREATION PROGRAMS AND OPEN SPACES.**

Policy 5.3

Facilitate the development of community-initiated or supported open spaces.

*The proposed Ordinance supports a pandemic Shared Space to continue in the Mission Street NCT. This Ordinance supports the Commerce and Industry Element's goal of retaining commercial activity that will help maintain a favorable social and cultural climate in San Francisco as it adds to the number of recreational activities available to San Franciscans. Additionally, this Ordinance aligns with the Recreation and Open Space Element's goal of maintaining open spaces on private land. Further, the Recreation and Open Space Element also strives to engage communities to ensure their open space needs are being met. This Outdoor Activity Area could serve as a recreational area for local residents aligning with various goals of the General Plan.*

**Planning Code Section 101 Findings**

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail. The proposed Ordinance would support a local, small business and their efforts to establish an Outdoor Activity Area.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The proposed Ordinance would not have a negative effect on housing or neighborhood character.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.*

### **Planning Code Section 302 Findings.**

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on April 20, 2023.

Jonas P. Ionin  
*Commission Secretary*

AYES:

NOES:

ABSENT:

ADOPTED: April 20, 2023



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**EXHIBIT B**

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

2

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

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

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

17

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board  
23 affirms this determination.

24 (b) On \_\_\_\_\_, 2023, the Planning Commission, in Resolution No.  
25 \_\_\_\_\_, 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

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

4

5 APPROVED AS TO FORM:  
6 DAVID CHIU, City Attorney

7 By: \_\_\_\_\_/s/  
8 JOHN D. MALAMUT  
9 Deputy City Attorney

9 n:\legana\as2023\2300115\01655577.docx

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## EXHIBIT C



4/3/2023

San Francisco Planning Commission  
49 Van Ness Avenue  
San Francisco, CA 94103

Dear Planning Commissioners,

I am writing to show Down With This Sort of Thing LLC dba Casements located at 2351 Mission St. support for Ordinance #230164 introduced on 2/14/2023.

If passed this ordinance would offer a tremendous benefit to Casements business model, it's staff, and the Mission neighborhood. It would allow Casements to continue to operate in the outdoor patio space as previously permitted by the Shared Spaces program.

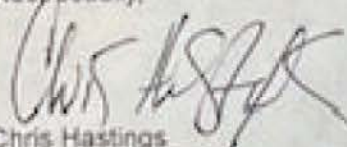
Casements has quickly become a stand out Mission District business. Opening weeks before COVID shut down the city Casements was able to not only survive the pandemic, but thrive. This is in major part because of the patio space. During COVID restrictions that made gathering inside most businesses impossible, the outdoor patio space offered a safe place to gather and provided a much-needed area to socialize, and build and maintain community. The ripple effects of this benefit are still having a positive impact on the neighborhood. On a block where many businesses have shuttered, Casements has been an exception, bringing much needed foot traffic and commerce to that portion of Mission St.

The loss of the patio would be a detriment to the neighborhood on multiple levels:

- It would mean the loss of employment opportunities for current and future staff.
- It would eliminate a comfortable outdoor gathering space.
- Another queer space would disappear.
- It would contribute to the blight already being experienced in the Mission neighborhood.

I am hoping that you will see the benefit that this business provides and support this ordinance.

Respectfully,

  
Chris Hastings  
Owner - Casements

Gillian Fitzgerald  
Owner - Casements



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

## MEMORANDUM

TO: Carla Short, Interim Director, Department of Public Works  
Jeffrey Tumlin, Executive Director, San Francisco Municipal Transportation Agency

FROM: Erica Major, Assistant Clerk, Land Use and Transportation Committee

DATE: February 22, 2023

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Ronen on February 14, 2023.

**File No. 230164**

**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.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: Erica.Major@sfgov.org.

cc: David Steinberg, Department of Public Works  
Ian Schneider, Department of Public Works  
John Thomas, Department of Public Works  
Lena Liu, Department of Public Works  
Kate Breen, San Francisco Municipal Transportation Agency  
Janet Martinsen, San Francisco Municipal Transportation Agency  
Joel Ramos, San Francisco Municipal Transportation Agency

BOARD of SUPERVISORS



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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).