

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: January 5, 2023  
To: Planning Department / Commission  
From: Erica Major, Clerk of the Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 221271  
Administrative Code - Treatment of Shared Spaces on Valencia Street Sidewalk Bulb-Out as Curbside Shared Spaces

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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).

1 [Administrative Code - Treatment of Shared Spaces on Valencia Street Sidewalk Bulb-Out as  
2 Curbside Shared Spaces]

3 **Ordinance waiving specified requirements in the Administrative Code to allow two food**  
4 **service shared spaces on a sidewalk bulb-out on the 500 Block of Valencia Street to be**  
5 **defined as curbside shared spaces, subject to certain requirements; and affirming the**  
6 **Planning Department’s determination under the California Environmental Quality Act.**

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

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

15 Section 1. Findings.

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

21 (b) Findings Regarding the Two Affected Hybrid Shared Spaces.

22 (1) The two food service seating areas that are the subject of this ordinance are  
23 located at 540-542 Valencia Street (Assessor Parcel No. 3568/006) and 544-546 Valencia  
24 Street (Assessor Parcel No. 3568/007) (together, the “Valencia Hybrid Spaces” or “VHS”) on  
25 the western side of the street between 16th and 17th Streets. During the declaration of COVID  
emergency, the restaurants associated with these addresses installed food service seating

1 areas on the midblock sidewalk bulb-out (the “Bulb-out”) as shared spaces in accordance with  
2 Administrative Code Sections 94A et seq. and Public Works Code Sections 793 et seq.  
3 pursuant to Ordinance No. 99-21.

4 (2) The Valencia Hybrid Spaces are located on or partially on a non-operational  
5 midblock Bulb-out on Valencia Street that has not functioned for its intended purposes. The  
6 City never activated this midblock crossing because City staff did not complete the bulb-out on  
7 the opposing (eastern) side of Valencia Street, stripe the roadway, or install other traffic and  
8 pedestrian design features to make the crossing functional.

9 (3) In contrast to the Valencia Hybrid Spaces, other enterprises along the 500 Block of  
10 Valencia Street’s western frontage installed parklets that are located in the curbside parking  
11 lane and are fixed to the roadway bed. As such, the majority of the parklets along this  
12 Valencia Street western frontage fall within the framework of Curbside Shared Spaces that  
13 are Fixed Commercial Parklets, as these two capitalized terms are defined in Administrative  
14 Code Section 94A.2 (collectively, the “Valencia Curbside Shared Spaces”).

15 (4) The Valencia Hybrid Spaces parallel the roadside edge of the Valencia Curbside  
16 Shared Spaces and, as a consequence, present a uniform line of restaurant seating areas  
17 adjacent to the Valencia Street vehicular travelway. In addition, the VHS generally have the  
18 same width as the Valencia Curbside Shared Spaces, which results in a consistent positioning  
19 on the curb along the Valencia Street sidewalk zone. The location of the Valencia Hybrid  
20 Spaces preserves an Americans’ with Disabilities Act compliant pedestrian path of travel width  
21 on the sidewalk.

22 (c) Notwithstanding the geographic uniformity of the Valencia Hybrid Spaces with the  
23 Valencia Curbside Shared Spaces, and their common function in providing outdoor seating for  
24 restaurants, the VHS are located on the midblock Bulb-out instead of in the curbside parking  
25 zone. As a consequence, they do not qualify as Curbside Shared Spaces under

1 Administrative Code Section 94A.2 and Public Works Code Sections 793 et seq. In addition,  
2 the Valencia Hybrid Spaces are affixed to the sidewalk, whereas Fixed Commercial Parklets  
3 are allowed only in the curbside parking zone and not on the sidewalk. Further, Sidewalk  
4 Shared Spaces as defined and addressed in Administrative Code Section 94A.2 and Public  
5 Works Code Sections 176 et seq. (Café Tables and Chairs) are temporary and removed each  
6 day after the close of business, and as such, may not be affixed to the sidewalk. Therefore,  
7 despite the VHS's similar size and placement between the vehicular travelway and sidewalk  
8 pedestrian path of travel as the Valencia Curbside Shared Spaces, the VHS do not qualify as  
9 Fixed Commercial Parklets/Curbside Shared Spaces because they are on the sidewalk  
10 instead of in the curbside parking zone; and, they do not qualify as Sidewalk Shared Spaces  
11 because they are affixed to the sidewalk and not removed each day. Consequently, the VHS  
12 are Shared Spaces that do not fall within the definitions or permitting scheme of any of the  
13 existing categories of Shared Spaces.

14 (d) In recognition of the economic, health, safety, and recreational contributions that  
15 Shared Spaces have provided to commercial enterprises, neighborhood businesses, and City  
16 residents and visitors, the Board of Supervisors intends to allow the Valencia Hybrid Spaces  
17 to continue operating as viable extensions of the associated restaurants in the same manner  
18 as the similarly situated Valencia Street Curbside Shared Spaces. To accomplish this  
19 objective, this ordinance waives specific provisions of the Administrative Code governing  
20 Shared Spaces that otherwise would be applicable to the Valencia Hybrid Spaces,  
21 conditioned on the VHS undergoing minor physical modifications to make them compliant with  
22 applicable laws and similarly situated Shared Spaces.

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1 Section 2. Waiver of Certain Administrative Code Provisions.

2 (a) In regard to the Valencia Hybrid Spaces, portions of Administrative Code Sections  
3 94A.2, 94A.4, and 94A.5 are hereby waived to allow the affected City departments to treat the  
4 VHS as Curbside Shared Spaces that are Fixed Commercial Parklets. In addition, these  
5 Administrative Code Sections are waived to the extent that the current VHS permittees shall  
6 not be required to obtain approval from the Director of Transportation under Section 2.4 of  
7 Division II of the Transportation Code for the VHS because the VHS are not located in the  
8 street.

9 (b) In implementing these waivers, the Public Works Director shall process permits for  
10 the VHS in accordance with the other requirements of Administrative Code Sections 94A et  
11 seq., Public Works Code Sections 793 et seq., and Public Works regulations for Curbside  
12 Shared Spaces that are Fixed Commercial Parklets and shall ensure that the VHS are  
13 compliant with these laws and regulations. To the extent that implementation of these waivers  
14 presents a conflict with Public Works Code Sections 176 et seq. or Sections 793 et seq., the  
15 provisions of this ordinance shall prevail, and the Public Works Director is authorized to  
16 exercise discretion to amend any regulations in conflict with this ordinance; provided,  
17 however, that the VHS shall comply with all regulations regarding public health and safety  
18 design features for Shared Spaces.

19  
20 Section 3. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

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1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
2 of Supervisors overrides the Mayor's veto of the ordinance.

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

6 By:           /s/ John D. Malamut            
7       JOHN D. MALAMUT  
8       Deputy City Attorney

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**LEGISLATIVE DIGEST**

[Administrative Code - Treatment of Shared Spaces on Valencia Street Sidewalk Bulb-Out as Curbside Shared Spaces]

**Ordinance waiving specified requirements in the Administrative Code to allow two food service shared spaces on a sidewalk bulb-out on the 500 Block of Valencia Street to be defined as curbside shared spaces, subject to certain requirements; and affirming the Planning Department’s determination under the California Environmental Quality Act.**

Existing Law

Administrative Code Sections 94A et seq. establishes the governing program for Shared Spaces, generally public or private spaces open to the public that allow for activation of street and sidewalk areas for food and beverage uses and other businesses enterprises. Shared Spaces is an interdepartmental program that is administered primarily through the Planning Department, Municipal Transportation Agency (MTA), and Public Works. Two categories of Shared Spaces are Curbside Shared Space that are affixed to the street (referred to as Fixed Commercial Parklets) and Sidewalk Shared Spaces (generally referred to as Café Tables and Chairs). The latter category requires removal at the end of each business day. Public Works is the permit issuing department for these two categories of Shared Spaces in accordance with the terms of Administrative Code Section 94A et seq. and various provisions of the Public Works Code, including Sections 793 et seq (Curbside Shared Spaces) and Sections 176 et seq. (Tables and Chairs). There are two Shared Spaces on the 500 Block of Valencia Street that were installed and affixed to a midblock sidewalk bulb-out during the more permissive rules in effect during the term of the City’s declaration of COVID emergency. Because of their location, these Shared Spaces do not qualify as Curbside Shared Spaces/Parklets and because they are affixed to the sidewalk they do not qualify as Café Tables and Chairs.

Amendments to Current Law

This ordinance is uncodified. The legislation would characterize the two Valencia Street food service seating areas as Valencia Hybrid Shared Spaces. The ordinance would waive the application of Administrative Code Sections 94A.2, .4, and .5 to: 1) allow Public Works to permit the Valencia Hybrid Shared Spaces as Curbside Shared Spaces despite the fact that they are affixed to the sidewalk instead of the curbside parking zone and 2) remove the MTA from the permit review because the Hybrid Spaces are on the sidewalk not the street. In regard to these Hybrid Spaces, the ordinance also would waive any conflicting provisions of the abovementioned Administrative Code Sections, Public Works Code Sections 176 et seq. and 793 et seq., and related City regulations that are necessary to implement the legislation; provided, however, that Public Works shall ensure compliance of the Hybrid Spaces with all regulations regarding public health and safety design features for Shared Spaces.

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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):

Subject:

Long Title or text listed:

Signature of Sponsoring Supervisor: