File 111047
BOS-11
LU clerk
(AS)
cpage

SAN FRANCISCO
PLANNING DEPARTMENT

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2011 DEC 20 PM 3:11
BY AK

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

December 19, 2011

Supervisor Chiu and
Ms. Angela Calvillo, Clerk
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 Case Number 2011.1160T**
BF No. 11-1047: Disability Access Improvements for Small Businesses and Landlord Obligations

Recommendation: **Approval with Modifications**

Dear Supervisor Chiu and Ms. Calvillo,

On December 15, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearings at a regularly scheduled meeting to consider the proposed Ordinance under Board of Supervisors File Number 11-1047.

At the December 15th Hearing, the Commission voted 7-0 to recommend approval with modifications of the proposed Ordinance, which would amend Sections 790.90, 790.91, and 790.102 to allow small self-service restaurants and retail coffee stores to exclude the square footage of floor area required for disabled access from the calculation of maximum allowable square footage for such uses under applicable zoning restrictions.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission. The attached resolution and exhibit provides more detail about the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AnMarie Rodgers
Manager of Legislative Affairs

Cc: City Attorney Adine Varah

Attachments (one copy of the following): Planning Commission Resolution No. 18508
Department Executive Summary

SAN FRANCISCO
PLANNING DEPARTMENT

Planning Commission Resolution No. 18508

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

HEARING DATE: DECEMBER 15, 2011

Project Name:	Amendments relating to Disability Access Improvements for Small Businesses and Landlord Obligations.
Case Number:	**2011.1160T** [Board File No. 11-1047]
Initiated by:	Supervisor Chiu / Introduced September 27, 2011
Staff Contact:	Aaron Starr, Legislative Affairs aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395

RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT A PROPOSED ORDINANCE WITH MODIFICATIONS THAT WOULD AMEND PLANNING CODE SECTIONS 790.90, 790.91, AND 790.102 TO ALLOW SMALL SELF-SERVICE RESTAURANTS AND RETAIL COFFEE STORES TO EXCLUDE THE SQUARE FOOTAGE OF FLOOR AREA REQUIRED FOR DISABLED ACCESS FROM THE CALCULATION OF MAXIMUM ALLOWABLE SQUARE FOOTAGE FOR SUCH USES UNDER APPLICABLE ZONING RESTRICTIONS.

PREAMBLE

Whereas, on September 27, 2011, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 11-1047 which would amend Sections 790.90, 790.91, and 790.102 to allow small self-service restaurants and retail coffee stores to exclude the square footage of floor area required for disabled access from the calculation of maximum allowable square footage for such uses under applicable zoning restrictions; and

Whereas, the proposed ordinance would also amend the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6; amends the San Francisco Campaign and Governmental Conduct Code Section 3.400; requiring commercial landlords leasing to small businesses for public accommodations to: 1) bring ground floor entrances to, and exits from, the building into compliance with applicable state and federal disability access laws; 2) inform small business tenants of the potential legal and financial liabilities for failure to comply with those laws; 3) include in any new or amended leases a provision addressing the respective obligations of the landlord and small business tenant to bring the leased premises into compliance with those access laws; 4) require the City to give priority to building permit applications for work to bring space leased to small business tenants into compliance with those access laws;

Whereas, on December 15, 2011, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance; and

Whereas, the proposed zoning changes have been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c)(2); and

Whereas, the 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 the applicant, Department staff, and other interested parties; and

Whereas, the all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

Whereas, the Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommends ***approval of the proposed Ordinance with modifications*** and adopts the attached Draft Resolution to that effect.

Specifically, the Commission recommends the following modifications:

1. Modify Planning Code Section 102.9, Gross Floor Area, to exclude the square footage of floor area required for disabled access from the calculation of Gross Floor Area.

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:

1. Providing disabled access is necessary for the operation and function of a building or use and in many cases it is required by the American's with Disabilities Act.

2. Gross Floor Area calculations do not currently exclude floor area dedicated to disabled access.

3. The Planning Commission recently recommended changes to the Planning Code that would remove the Small Self-Service Restaurant and Retail Coffee Store use categories from the Planning Code. If those changes are adopted into law, the subject legislation would be less effective.

4. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan:

   <u>I. COMMERCE & INDUSTRY ELEMENT</u>
   THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC

ACTIVITIES, FACILITIES, AND SUPPPORT SYSTEMS THAT CONSTITUE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

GOALS
THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

OBJECTIVE 1
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.2
Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The proposed legislation as amended by the Planning Commission would make it easier for new buildings and businesses to meet minimum disabled access standards by excluding areas dedicated to disable access from their Gross Square Footage requirements.

OBJECTIVE 6
MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

POLICY 6.2
Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

The proposed Ordinance would lessen restrictions on small business owners by excluding areas dedicated to disable access from their Gross Square Footage requirements. Excluding this use from Gross Floor Area calculations allows business owners to better utilize their space without exceeding floor area ratio and non-residential use size limits in the Planning Code.

5. The proposed replacement project is consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

   A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

   The proposed Ordinance will allow small business owners to provide disabled access without taking away floor space that helps generate revenue for the business.

B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed legislation would not have any negative impact on existing housing or neighborhood character.

C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effect on the City's supply of affordable housing.

D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

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

E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed amendments. Any new construction or alteration associated with a use would be executed in compliance with all applicable construction and safety measures.

G) That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed amendments. Should a proposed use be located within a landmark or historic building, such site would be evaluated under typical Planning Code provisions and comprehensive Planning Department policies.

H) Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments. It is not anticipated that permits would be such that sunlight access, to public or private property, would be adversely impacted.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on December 15, 2011.

Linda Avery
Commission Secretary

AYES: Commissioners Moore, Sugaya, Fong, Antonini, Olague, Miguel and Borden

NAYS: None

ABSENT: N/A

ADOPTED: December 15, 2011

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: DECEMBER 15, 2011

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name:	Amendments relating to Disability Access Improvements for Small Businesses and Landlord Obligations.
Case Number:	**2011.1160T** [Board File No. 11-1047]
Initiated by:	Supervisor Chiu / Introduced September 27, 2011
Staff Contact:	Aaron Starr, Legislative Affairs aaron.starr@sfgov.org, 415-558-6362
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415-558-6395
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE & ADMINISTRATIVE CODE AMENDMENT

The proposed Ordinance would amend the San Francisco Planning Code by amending Sections 790.90, 790.91, and 790.102 to allow small self-service restaurants and retail coffee stores to exclude the square footage of floor area required for disabled access from the calculation of maximum allowable square footage for such uses under applicable zoning restrictions.

The proposed ordinance also amends the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6; amends the San Francisco Campaign and Governmental Conduct Code Section 3.400; requiring commercial landlords leasing to small businesses for public accommodations to: 1) bring ground floor entrances to, and exits from, the building into compliance with applicable state and federal disability access laws; 2) inform small business tenants of the potential legal and financial liabilities for failure to comply with those laws; 3) include in any new or amended leases a provision addressing the respective obligations of the landlord and small business tenant to bring the leased premises into compliance with those access laws; 4) require the City to give priority to building permit applications for work to bring space leased to small business tenants into compliance with those access laws; and 6) adopt environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1

The Commission is free to comment on any part of the proposed legislation before them.

The Way It Is Now:

This Section only covers amendments to the Planning Code and does not discuss amendments to other City Codes.

Small Self-Service Restaurants are limited to 1,000 sq. ft. of Gross Floor Area, and Retail Coffee Stores are not permitted to have more than 15 seats with no more than 400 square feet of floor area devoted to seating. Gross Floor Area calculations do not currently exclude the square footage of floor area required for disabled access and there is no specific provision in the Code that excludes the square footage of floor area required for disabled access from the seating area in Retail Coffee Stores.

The Way It Would Be:

This Section only covers amendments to the Planning Code and does not discuss amendments to other City Codes.

The proposed ordinance would allow Small Self-Service Restaurants and Retail Coffee Stores to exclude the square footage of floor area required for disabled access from the calculation of maximum allowable square footage for these uses.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATION

The Department recommends that the Commission recommend ***approval with modifications*** of the proposed Ordinance ***with modifications*** to include:

1. Modify Planning Code Section 102.9, Gross Floor Area, to exclude the square footage of floor area required for disabled access from the calculation of Gross Floor Area.

BASIS FOR RECOMMENDATION

The Department is recommending that area dedicated to disable access be exempt from all Gross Floor Area Calculations because such accesses is necessary for the operation and function of a building or use, and in some cases is required by the Americans with Disabilities Act (ADA). The Planning Code already exempts floor area dedicated to other uses essential for a building's operation and function; such as mechanical equipment, elevator and stair penthouses, maintenance areas, and the like. Further, the Department is in the process of developing legislation that would exempt bicycle parking from Gross Floor Area calculations in recognition of the greater public benefit that this use provides.

The Planning Commission recently recommended the consolidation of the eating and drinking definitions in the Planning Code. If ultimately adopted into law, this consolidation would remove the Small Self-Service Restaurant and Retail Coffee Store definitions from the Planning Code, which would delete the proposed changes to the Planning Code under this legislation. The Department believes that the idea behind the legislation, not penalizing business or property owners when they provide disable access, is a good one and should apply not just to restaurants and coffee stores, but all uses.

ENVIRONMENTAL REVIEW

The proposal to amend the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6; amending the San Francisco Planning Code Sections 790.90, 790.91, and 790.102; amending the San Francisco Campaign and Governmental Conduct Code Section 3.400 would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c)(2) of the CEQA Guidelines.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any comments regarding the proposed Ordinance.

RECOMMENDATION:	Recommendation of Approval with Modification

Attachments:

Exhibit A: Draft Planning Commission Resolution
Exhibit B: Board of Supervisors File No. 11-1047