File No. 111047 Committee Item No. 8
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** July 23, 2012

Board of Supervisors Meeting **Date** _____

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☒	☐	Environmental Review Determination, dtd 10/13/11
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Completed by: Alisa Miller **Date** July 20, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Administrative, Campaign and Governmental Conduct Codes - Obligations of Landlords and Small Business Tenants for Disability Access Improvements]

Ordinance amending the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6, and amending San Francisco Campaign and Governmental Conduct Code Section 3.400, all to require commercial landlords leasing properties to small businesses for use as public accommodations to: 1) bring public restrooms, ground floor entrances to, and exits from, the building into compliance with applicable state and federal disability access laws or to disclose to tenants any noncompliance; 2) inform small business tenants of 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; and 4) to 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 making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. Environmental Findings. The Planning Department has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 111047, and is incorporated herein by reference.

Section 2. The San Francisco Administrative Code is hereby amended by adding Chapter 38, Sections 38.1 through 38.6, to read as follows:

CHAPTER 38: COMMERCIAL LANDLORDS; ACCESS IMPROVEMENT OBLIGATIONS AND NOTICE TO SMALL BUSINESS TENANTS REGARDING DISABILITY ACCESS

SEC. 38.1. FINDINGS.

Given the significant number of small businesses in the City and County of San Francisco, the Board of Supervisors finds:

(1) The City has a strong public interest in ensuring that small businesses operating public accommodations comply with applicable disability access laws, and in ensuring clear communications between Commercial Landlords and their Small Business Tenants regarding their respective responsibilities for disability access improvements.

(2) The City has a strong public interest in ensuring clear communication between Commercial Landlords and Small Business Tenants regarding the extent to which the Commercial Landlord has or has not implemented required disability access improvements prior to the start or renewal of a lease.

(3) The City has a strong public interest in protecting Small Business Tenants from unforeseen expenses and liabilities arising out of required disability access improvements.

(4) This Chapter is intended to ensure that: (i) public restrooms and ground floor entrances to and exits from real property leased to Small Business Tenants comply with applicable disability access requirements and that Commercial Landlords disclose any noncompliance with such requirements before a Small Business Tenant enters into or renews a lease for the property; (ii) Commercial Landlords and Small Business Tenants receive priority permit processing for work consisting primarily of disability access improvements; and (iii) every new and amended commercial lease between a Commercial Landlord and a Small Business Tenant for premises that will be used as a public accommodation clearly and expressly addresses the respective obligations of the parties regarding

disability access improvements. This Chapter is further intended to help encourage and facilitate disability access improvements by Commercial Landlords and Small Business Tenants.

SEC 38.2. DEFINITIONS.

For purposes of this Chapter 38:

(a) "Commercial Landlord" shall mean an individual or entity that owns real property in San Francisco and leases that real property to a Small Business Tenant to operate as a Public Accommodation Facility.

(b) "Public Accommodation" shall have the same meaning as under Title III of the Americans with Disabilities Act, 42 U.S.C. 12181(7) and the federal regulations adopted under that section, as may be amended from time to time.

(c) "Public Accommodation Facility" shall mean property of 7,500 square feet of space or less leased by a Small Business Tenant to be used as a Public Accommodation.

(d) "Small Business" shall mean a business leasing 7,500 square feet of space or less from a Commercial Landlord in San Francisco for use as a Public Accommodation Facility.

(e) "Small Business Lease" shall mean a real property lease between a Commercial Landlord and a Small Business Tenant, for real property of 7,500 square feet of space or less, to be used as a Public Accommodation Facility.

(f) "Small Business Tenant" shall mean a Small Business that leases space in San Francisco from a Commercial Landlord for use as a Public Accommodation Facility.

SEC. 38.3. DISABILITY ACCESS IMPROVEMENTS; NOTICE OF DISABILITY ACCESS OBLIGATIONS.

(a) Before entering into or amending a Small Business Lease, a Commercial Landlord shall either:

(1) Ensure that any public restrooms are accessible, and also that any ground floor entrances and exits are accessible by removing all architectural barriers to disability access, to the extent that such improvements are required by and "readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense" within the meaning of any applicable provisions of Title 28, Sections 36.304 and 36.305, of the Code of Federal Regulations; or,

(2) Provide written notice to any prospective Small Business Tenant that the public restrooms and/or ground floor entrances and exits currently do not meet the disability access standards of Title 28, Sections 36.304 and 36.305, of the Code of Federal Regulations.

(b) Before entering into or amending a Small Business Lease, a Commercial Landlord shall also provide a written notice to each prospective Small Business Tenant (the "Disability Access Obligations Notice") in substantially this form:

DISABILITY ACCESS OBLIGATIONS UNDER SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38

Before you, as the Tenant, enter into a lease with us, the Landlord, for the following property [INSERT DESCRIPTION/ADDRESS](the "Property"), please be aware of the following important information about the lease:

You May Be Held Liable for Disability Access Violations on the Property. *Even though you are not the owner of the Property, you, as the tenant, may still be subject to legal and financial liabilities if the Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering this lease to make sure that you understand your obligations under Federal and State disability access laws.*

The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property. *Under City law, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the property. The lease must also require you and the*

Landlord to use reasonable efforts to notify each other if they make alterations to the property that might impact accessibility under federal and state disability access laws. You may wish to review those provisions with your attorney prior to entering this lease to make sure that you understand your obligations under the lease.

By signing below I confirm that I have read and understood this Disability Access Obligations Notice.

Signed: _____, Tenant

(c) If the Commercial Landlord does not ensure that any existing public restrooms are accessible, and also that any ground floor entrances and exits are accessible as provided in subsection (a)(1) and instead proceeds under subsection (a)(2), the Commercial Landlord shall include the following statement in Disability Access Obligations Notice required under subsection (b):

*"**PLEASE NOTE:** The public restrooms and/or ground floor entrances and exits of the Property currently do not meet the disability access standards of Title 28, Sections 36.304 and 36.305, of the Code of Federal Regulations."*

The Commercial Landlord shall also provide a specific explanation of how the restrooms and entrances are out of compliance as part of the Disability Access Obligations Notice.

(d) The Commercial Landlord must obtain the Small Business Tenant's signature on the Disability Access Obligations Notice under subsections (b) and (c) on or before execution or amendment of the Small Business Lease.

SEC. 38.4. PRIORITY PERMIT PROCESSING FOR DISABILITY ACCESS WORK.

The City shall give priority under Section 3.400 of the Campaign and Governmental Conduct Code to any permit application from a Commercial Landlord, or Small Business Tenant, or any small business that owns and operates a Public Accommodation facility of 7,500 square feet or less of space

in San Francisco, for work consisting primarily of disability access improvements at a Public Accommodation Facility. The Zoning Administrator shall determine whether a permit application qualifies for priority under this Section.

Nothing in this Section is intended to otherwise limit the scope of priority permit processing required by law.

SEC. 38.5. LEASE PROVISIONS REGARDING OBLIGATIONS OF LANDLORDS AND TENANTS FOR DISABILITY ACCESS IMPROVEMENTS.

Every Small Business Lease, and every amendment to such a lease, must include a provision setting forth in express terms the obligations of the Commercial Landlord and the Small Business Tenant for making required disability access improvements to the property and for paying for those improvements. The Small Business Lease must also include a provision in which the Commercial Landlord and Small Business Tenant agree to use reasonable efforts to notify each other if either makes alterations to the property that might impact accessibility under Federal and State disability access laws.

SEC. 38.6. OPERATIVE DATES.

(a) Except as provided in subjection 38.6(c), the provisions of this Chapter 38 shall apply to Small Business Leases of property of 7,500 to 5,001 square feet of space, and to the parties to those leases, entered into, or amended, on or after January 1, 2013.

(b) Except as provided in subjection 38.6(c), The provisions of this Chapter 38 shall apply to Small Business Leases of property of 5,000 square feet of space or less, and to the parties to those leases, entered into, or amended, on or after June 1, 2013.

(c) The provisions of Section 38.4 shall apply beginning November 1, 2012.

Section 3. The San Francisco Campaign and Governmental Conduct Code is hereby amended by amending Section 3.400 to read as follows:

SEC. 3.400. PERMIT APPLICATION PROCESSING.

(a) EQUAL TREATMENT OF PERMIT APPLICANTS. It shall be the policy of the Department of Building Inspection, the Planning Department, the Department of Public Works and the officers and employees of such departments to treat all permit applicants the same regardless of the relationship of the applicant and/or the applicant's representatives to any officer or employee of the City and County and regardless of whether the applicant hires a permit consultant to provide permit consulting services. Intentional preferential treatment of any permit applicant and/or the applicant's representatives by any officer or employee of the Department of Building Inspection, the Planning Department, or the Department of Public Works shall subject the officer or employee to disciplinary action for official misconduct.

(b) APPLICATION PRIORITY. It shall be the policy of the Department of Building Inspection, the Planning Department, the Department of Public Works and the officers and employees of such departments to review, consider, and process all applications, revisions, corrections and other permit-related material in the order in which that type of material is received unless there is a written finding of a public policy basis for not doing so, such as the involvement of public funds in the project for which the permit is sought, or the response to a delay caused by an earlier procedural error in processing the permit or another permit for the same project. Absent such a finding, any officer or employee of the Department of Building Inspection, the Planning Department, the or Department of Public Works who intentionally fails to review, consider and process all applications, revisions, corrections and other permit-related material in the order in which that type of material is received shall be subject to disciplinary action for official misconduct. The Department of Building Inspection, the Planning Department, and the Department of Public Works shall each adopt written guidelines

for determining when there is a public policy basis for processing permit material out of order. *For purposes of this section, and any corresponding written guidelines, expediting of work consisting primarily of disability access improvements for real property shall qualify as a public policy basis for processing permit material out of order, on a priority basis.*

(c) PERMIT PROCESSING CODE OF CONDUCT. No later than 60 days after the effective date of this Article, the Ethics Commission shall adopt a code of conduct for permit processing (the "Permit Processing Code of Conduct") containing ethical guidelines for permit applicants, permit consultants, and officers and employees of the Department of Building Inspection, the Planning Department, the and Department of Public Works. The Permit Processing Code of Conduct shall be posted in a conspicuous place in each department, and a copy shall be distributed to each officer of the City and County who makes or participates in making decisions related to permit applications.

~~*(d) EFFECTIVE DATE. The provisions of this Section shall take effect December 15, 2004.*~~

Section 4. General Provisions.

(a) **Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

(b) **No Conflict with State or Federal Law.** Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(c) **Undertaking for the General Welfare.** In adopting and implementing this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing in its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 5. Effective Date. This ordinance shall become effective 30 days from the date of passage.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
ADINE VARAH
Deputy City Attorney

FILE NO. 111047

REVISED LEGISLATIVE DIGEST

(7/17/2012, Substituted in Board)

[Administrative, Campaign and Governmental Conduct Codes - Obligations of Landlords and Small Business Tenants for Disability Access Improvements]

Ordinance amending the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6, and amending San Francisco Campaign and Governmental Conduct Code Section 3.400, all to require commercial landlords leasing properties to small businesses for use as public accommodations to: 1) bring public restrooms, ground floor entrances to, and exits from, the building into compliance with applicable state and federal disability access laws or to disclose to tenants any noncompliance; 2) inform small business tenants of 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; and 4) to 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 making environmental findings.

Existing Law

The Administrative Code does not require commercial landlords to complete any disability access improvements as a prerequisite to leasing, or renewing leases with small business tenants for, real property or to notify small business tenants whether such improvements are complete. Nor does the Administrative Code require commercial landlords to notify small business tenants of potential legal and financial liabilities for failure to make required access improvements or require commercial leases to address the parties' respective disability access obligations. In addition, the Campaign and Governmental Conduct Code does not expressly state that disability access improvements constitute a public policy basis for priority processing.

Amendments to Current Law

Under the proposed Ordinance, commercial landlords, prior to entering or renewing a lease with a small business tenant, must either (1) bring any public restrooms and ground floor entrances and exits into compliance with applicable disability access laws or (2) notify their tenants of the commercial landlord's failure to do so. Commercial Landlords must also notify Small business tenants of potential liabilities for failure to comply with those laws, and include in any lease the parties' respective disability access obligations. This Ordinance applies to new or amended Small Business Leases of property of 7,500 to 5,001 square feet beginning January 1, 2013 and to new or amended Small Business Leases of property of 5,000 square feet of space or less beginning June 1, 2013.

The Ordinance would allow the appropriate City departments to grant priority processing to building permit applications for disability access improvements by Commercial landlords and small businesses.

BOARD of SUPERVISORS

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

October 12, 2011

File No. 111047

Not subject to CEQA per Guidelines Section 15060(c)(2): activity would not result in a direct physical change in the environment.

Brett Bollinger 10/13/11
Approved Planning Dept. Brett Bollinger 2011.1160E

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On September 27, 2011, Supervisor Chiu introduced the following proposed legislation:

File No. 111047

Ordinance amending 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; 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; 5) 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 6) adopt environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

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,

Sara Ste for

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

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CA 94103-2479

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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:
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Fax:
415.558.6409

Planning
Information:
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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