File No. 111047

Committee Item No. 8
Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

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

Board of Supervisors Meeting Date 9/04/12

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Completed by: Alisa Miller Date July 20, 2012
Completed by: Derek Evans Date July 24, 2012

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

FILE NO. 111047 ORDINANCE NO.

[Administrative and 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~~7, 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 that the property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits ~~any noncompliance~~; 2) inform small business tenants ~~of potential~~ that they may be legally and financially liable~~ilities~~ for failure~~ing~~ to comply with those laws and offer such tenants copies of the Small Business Commission's access information notice; ~~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) requiring the Small Business Commission, by January 1, 2013, to develop and distribute an access information notice in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco and to make that notice available for distribution through various other City departments; and ~~4)~~5) to require the City to give priority to building permit applications for work to bring space ~~leased to~~ used by small businesses ~~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) "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.

~~(b)~~(c) *"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)~~(d) *"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)~~(e) *"Small Business* Tenant*" 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~~ existing *public restrooms* ~~are accessible, and also that any,~~ *ground floor entrances, and* ground floor *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 property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. ~~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,* as well as the Property owner, *may still be subject to legal and financial liabilities if the* leased *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 Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the Administrative Code in your requested language. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call 415-554-6134.

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* leased P~~p~~*roperty. The lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the* leased P~~p~~*roperty 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

Signed: _____, Landlord

(c) If the Commercial Landlord does not ensure that ~~any~~ *existing public restrooms* ~~are accessible, and also that any~~*, ground floor entrances, and* ground floor *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 Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. ~~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 sign, and *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* and shall provide the tenant with a copy of the Small Business Commission's Access Information Notice as defined under Section 38.6 in the tenant's requested language.

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~~ that *Public Accommodation* ~~Facility~~. *The* ~~Zoning Administrator~~ Director of the Department of Building Inspection *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* with a Small Business Tenant, *and every amendment to such a* Lease ~~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* leased *property that might impact accessibility under Federal and State disability access laws.*

SEC. 38.6. SMALL BUSINESS COMMISSION ACCESS INFORMATION NOTICE.

On or before January 1, 2013, the Small Business Commission, in consultation with the Mayor's Office on Disability and the City Attorney's Office, shall develop and distribute a written notice or pamphlet ("Access Information Notice") in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco. The Small Business Commission shall distribute copies of such Notice to the Planning

Department, the Department of Building Inspection, the Department of Public Health, the Treasurer/Tax Collector, the Mayor's Office on Disability, and the Assessor-Recorder's Office (collectively, the "Departments"). Those Departments shall also make such Access Information Notice publicly available in their respective offices and through their websites.

SEC. 38.7~~6~~. OPERATIVE DATES.

(a) Except as provided in subjection 38.7~~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 38.7~~6~~(c), ~~T~~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

LEGISLATIVE DIGEST

(7/23/12 – Amended in Committee)

[Administrative and 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 38.7, 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 that the property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits; 2) inform small business tenants that they may be legally and financially liable for failing to comply with those laws and offer such tenants copies of the Small Business Commission's access information notice; 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) requiring the Small Business Commission, by January 1, 2013, to develop and distribute an access information notice in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco and to make that notice available for distribution through various other City departments; and 5) to require the City to give priority to building permit applications for work to bring space used by small businesses into compliance with those access laws, and making environmental findings.

Existing Law

The Administrative Code does not require commercial landlords to complete disability access improvements as a prerequisite to entering, or amending, leases with small business or to notify small business tenants whether such improvements are complete. Nor does the Administrative Code require commercial landlords to notify such tenants that they may be legally and financially liable for failing to make required access improvements or offer tenants information about access laws. The Administrative Code also does not require commercial leases to address the parties' respective disability access obligations or require City departments to provide information to small businesses regarding access laws. 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 amending 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 that the property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits. Commercial landlords must also notify small business tenants that they may be legally and financially liable for failing 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 require the Small Business Commission to develop and distribute an "Access Information Notice" in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco and to make that notice available for distribution through various other City departments, including the Planning Department, the Department of Building Inspection, the Department of Public Health, the Treasurer/Tax Collector, the Mayor's Office on Disability, and the Assessor-Recorder's Office. The Ordinance would also require commercial landlords to provide tenants with a copy of the Small Business Commission's Access Information Notice.

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.

Rec'd in Committee 7/23/12
File No. 111047

Supervisor Chiu Proposed Amendments

Ordinance: ADA Improvements – Obligations of Landlords and Small Business Tenants

Land Use Committee 7/23/12

Amendments:

1. Add Section 38.6, which requires the Small Business Commission, by January 1, 2013, to develop and distribute an "Access Information Notice" in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco and to make that notice available for distribution through various other City departments. Add in Section 38.3 that commercial landlords must provide this notice to tenants at the time of lease signing.
2. In Section 38.3, change the required Landlord disclosure so that if a commercial landlord has not ensured that public restrooms and groundfloor entrances/exits are accessible, the commercial landlord must provide written notice to the prospective tenant that the property **may not** currently meet all applicable standards. Also, delete the language requiring that the commercial landlord provide a specific explanation of how the restrooms and entrances are out of compliance.

Additional Technical Changes & Clarifications:

3. In Section 38.2, streamline definitions for small business, small business lease, and small business tenant. These also result in small terminology changes throughout ordinance.
4. In Section 38.4, instead of the Zoning Administrator determining whether a permit application qualifies for priority under this Section, change to the Director of Building Inspection.
5. In Section 38.3, in the Disability Access Improvements Notice, clarify that the disclosure requirements only apply to the leased portion of the property, not the entire property.

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)(3): 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
CU clerk
(AS)
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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 Vellve 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

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

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

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

BOARD of SUPERVISORS

City Hall
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San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

October 12, 2011

Planning Commission
Attn: Linda Avery
1660 Mission Street, 5th Floor
San Francisco, CA 94103

Dear Commissioners:

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 proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use & Economic Development Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

Alisa Miller

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

Attachment

c: John Rahaim, Director of Planning
Scott Sanchez, Zoning Administrator
Bill Wycko, Chief, Major Environmental Analysis
AnMarie Rodgers, Legislative Affairs
Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

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

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Chris Schulman, Commission Secretary
Small Business Commission, City Hall, Room 448

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: October 12, 2011

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use & Economic Development Committee

The Board of Supervisors Land Use and Economic Development Committee has received the following, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

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.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

****

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ No Comment

____ Recommendation Attached

_____

Chairperson, Small Business Commission

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

MEMORANDUM

TO: Susan Mizner, Director, Mayor's Office on Disability

FROM: Alisa Miller, Clerk, Land Use and Economic Development Committee
Board of Supervisors

DATE: October 12, 2011

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Economic Development Committee has received the following proposed legislation, introduced by Supervisor Chiu on September 27, 2011, which is being referred to your department/commission for informational purposes.

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.

If you wish to submit any comments or reports, please forward those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Rec'd in Committee 7/23/12
File no: 111 097

A micro-business owner's suggestions:

- Penalties for speaking up against the serial litigants and retaliation
- CASp industry regulation and CASp inspection legally enforceable
- City protection where readily achievable repairs can't be made to existing structures to allow for equivalent facilitation considerations on a more lenient basis
- Dissemination of information, including changes to the law as they are made, to the micro and small businesses at city offices and other business/government intersections
- A brochure at the intersections of new and established businesses making everyone aware of ADA compliance issues
- Penalties for serial litigants, plaintiffs and lawyers for not acting in good faith, and for targeting and harassing small and micro businesses
- Earnings from these lawsuits, including the inflated legal fees, should go to an agency to benefit the disabled community, or to offset costs of becoming compliant
- Stop CA litigants from benefitting financially from ADA lawsuits

STOP IMPLEMENTATION BY LITIGATION

City and County of San Francisco

Office of Small Business

Hearing On The Impact of Americans With Disabilities (ADA) Based Lawsuits on Small Businesses in San Francisco

July 23, 2012

Rec'd in Committee 7/23/12
File No. 111047

Overview:

- Enforcement through Civil Litigation is not the best mean of compliance for both individual with disabilities and small business = government is failing
- Suits range from businesses that have been in business pre 1992 to recently a opened business
- High percentage are restaurants and/or minority owned.
- Groups of businesses in a merchant area are sued at the same time by the same plaintiff. Plaintiff returns months later
- Lawsuits average settlement is $20,000. Times that by 400, roughly a combined $8,000,000.00 has been paid in legal fees and injunctive relief

Overview:

- Since 2002 approximately 400 + small businesses have been sued
- High percentage are restaurants and/or minority owned.
- Groups of businesses in a merchant area are sued at the same time by the same plaintiff. Plaintiff returns months later
- Lawsuits average settlement is $20,000. Times that by 400, roughly a combined $8,000,000.00 has been paid in legal fee and injunctive relief
- Suits range from businesses that have been in business pre 1992 to recently a opened business

OSB Program:

- Launched official program January 2011
- Program contains:
  - List of Federal and State Laws
  - CASp program and why it is important to do
  - What to look for in a CASp inspector
  - List of CASp inspectors
  - Federal Annual Tax Credit and Deductions
  - Opportunity Fund Loan for ADA Compliance
  - San Francisco Bar Association initial 30 minute consultation for $35.
- San Francisco is the only City do date that has developed such a program for small business

Outreach past and present:

- February 2011, mailed information to over 3000 food establishments in 7 languages
- Since 2008, OSB has been conducted **51** presentation or workshops Campaigns by district:

District	Number of Campaigns
All	28
1	1
2	1
3	4
4	2
5	2
6	1
7	0
8	5
9	3
10	3
11	1

Outreach past and present:

- **4** business have accessed the loan program
- **40** business have utilized the SF Bar Association legal services
- **25** articles combined in print media. 10 articles in the Chinese press, 7 in the Chronicle/sfgate.com, 5 Examiner, 2 in the SF Weekly, and 1 in San Francisco Attorney
- Panel presentation on "Your Legal Rights" with Chuck Finney, September 2011
- **183** clients served at the OSB on ADA related cases where either assistance was provided to a small business or small property owner that was sued, received a letter or inquired about ADA information.

City & County of San Francisco
Office of Small Business

Enter Keyword

General Services Agency

ADA Requirements & Your Small Business

The Office of Small Business is here to help you understand the complex rules and regulations surrounding ADA requirements, ways to bring your business into compliance and mitigate possible law suits, and resources that can help you along the way. Remember, accessibility is good for business.

- **ADA Requirements Overview**
  [English] [Chinese] [Spanish] [Tagalog]
  [Russian] [Vietnamese] [Japanese]

- **ADA Guidelines for Small Businesses (Booklet)**
  [English] [Chinese] [Spanish]

- **Loans for ADA Compliance**
  [English] [Chinese] [Spanish]

- **ADA Tax Credits and Deductions**
  [English] [Chinese] [Spanish] [Tagalog]
  [Russian] [Vietnamese] [Japanese]

- **How to Choose a Certified Access Specialist (CASp Inspector)**
  [English] [Chinese] [Spanish] [Tagalog]
  [Russian] [Vietnamese] [Japanese]

- **List of Local Certified Access Specialists (CASp Inspectors)**
  [English] [Chinese] [Spanish]

- **The Bar Association of SF's Lawyer Referral and Information Service**
  [English] [Chinese] [Spanish] [Tagalog]

- **ADA Guidelines for Service and Support Animals**
  [English]

*** Video: "ADA Compliance for Small Businesses"**
This workshop is presented by the Office of Supervisor Carmen Chu and the Bar Association of San Francisco. Learn about: Overview of Americans with Disability Act (ADA), compliance with the ADA, how to respond to lawsuits, loan programs for construction, legal services available, and much more.

*** Lawyer Referral and Information Service**
The Bar Association of San Francisco provides a lawyer referral service to help small businesses with ADA

Outreach planned:

- Mandating CBDG recipients educate their clients on public accommodation requirements
- Asian Neighborhood Design awarded a small CBDG grant to conduct outreach, education and solution assistance. This will start in September 2012
- OSB to educate the Job Squad so they too will conduct outreach and education to the businesses in their assigned neighborhoods

Local level improvement:

1. DBI escalate the CASp training and certification of their inspectors
2. Improved coordination between DBI, Historical Preservation and DPW.
3. DBI has a head CASp Inspector that has ultimate authority in determining resolution between the above three entities
4. DBI establish a registry of buildings where entrances are technically infeasible to comply with State and Federal guidelines
5. Legal requirement for all architects working in or with SF businesses with tenant improvements under the valuation threshold, are required to inform their clients they are not fully accessible
6. A business selling their business needs to provide a inspection report by a CASp inspector

State level improvement:

1. Develop more consistent standards for CASp inspections and the survey and reports
2. Municipalities have a head CASp Inspector that has ultimate authority in determining resolution between the conflicting agencies
3. Need to have the California Building Code certified at the Federal Level
4. Establish guidelines on what is a technical violation and what is an actual civil rights violation
5. California Building Code recognizes a local municipality's registry of buildings where entrances are technically infeasible to comply with State and Federal guidelines
6. CDA recognizes the above therefore property owner or business can not be sued

State level improvement:

1. Modify CEQA so that it can not trump accessibility

2. Legal requirement for all architects working in and with California businesses that have tenant improvements under the valuation threshold, are required to inform their clients they are not fully accessible
3. Possible mandate all existing landlords and small businesses obtain a CASp inspection and report/survey

Federal level improvement:

1. All federal government agencies, profit business and non-profits receiving federal economic development funds, SBA loans are required to education and inform businesses of both the State and Federal disabled access guidelines

2. California has a built in definition of 'readily achievable" with the valuation threshold. The Federal ADA needs to recognize when States have created that definition and certification of achievement businesses can't be litigated

3. Establish guidelines on what is a technical violation and what is an actual civil rights violation

SB 1186 and what it attempts to accomplish:

- Currently, in Senate Judicial Committee to work on the fine details
- An attorney shall provide a written advisory with each complaint or settlement demand sent to or served by him or her upon a defendant, in a form available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California to the property owner and tenant informing them of their legal obligations, legal rights, consult attorney (affordable solutions with local bar association and consult a Certified Access Specialist.
- A commercial property owner shall state on the lease form or rental agreement if the property being leased or rented "is CASp-inspected" or "is not CASp-inspected."
- The CCDA to regularly report on:
  - Issues regarding compliance with state laws and regulation
  - Whether public and private inspection programs, including the Certified Access Specialist Program, are meeting the needs of both the business community and the disability community
  - Examine the federal and state laws that provide persons with disabilities the right to full and equal access to places of public accommodation, and to address any conflict between those laws in construction-related accessibility standards that may lead to unnecessary litigation.
  - The commission shall act as an information center on the status of compliance in California with state laws and regulations providing persons with disabilities full and equal access to public facilities

Certified Access Specialist Program

- What is a CASp?
- CASp Inspections
- Benefits of a CASp Inspection
- CASI
- Examples of local CASp survey issues
- Status of CASp Program

Zachary Nathan Architect, AIA, CASp

Rec'd in Committee 7/23/12
File No: 1047

What is a CASp?

- The California Division of the State Architect certifies specially trained experts in disability access requirements known as Certified Access Specialists or CASp
- Most CASps are building inspectors, architects, contractors, engineers and people with extensive backgrounds in accessibility issues.
- Must meet minimum qualifications
- Pass a multiple choice test about codes and standards, access issues, plan review and field issues.
- Pay fees.
- Continuing education requirement.
- Not all CASps do surveys

CASp Inspection

- A CASp survey of a public accommodation will result in 1 of 2 conclusions.
- CASp Inspected
- CASp Determination Pending

CASP Inspected

For a **CASp-inspected** site, the CASp provides a written inspection report that includes:

- A statement that, in the opinion of the CASp, the inspected structures and areas of the site meet construction-related accessibility standards.
- If corrections were made as a result of the CASp inspection, an itemized list of all corrections and dates of completion.
- A statement that indicates whether the determination of the CASp includes an assessment of readily achievable barrier removal.

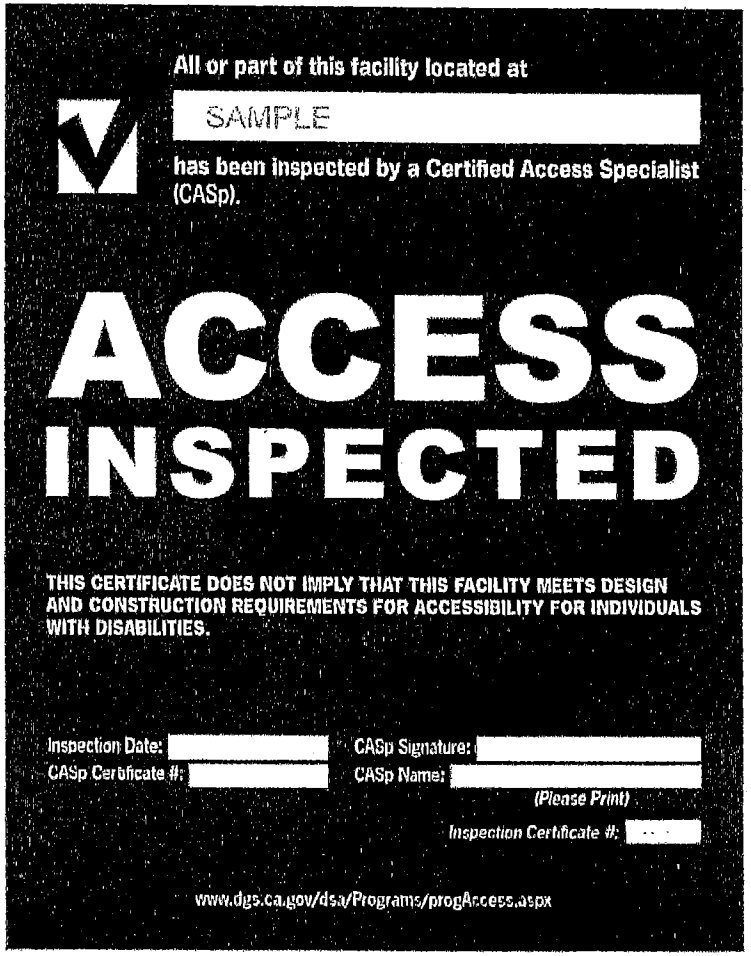
CASp – Determination Pending

For a CASp **determination pending** site, if the CASp determines that corrections are needed, the CASp provides a signed and dated written inspection report to the requesting party that includes all of the following:

- A statement that, in the opinion of the CASp, the inspected structures and areas of the site need correction to meet construction-related accessibility standards.
- A description of the corrections needed.
- A schedule of completion for each of the corrections within a reasonable timeframe.
- The statement must clearly indicate whether the determination of the CASp includes an assessment of readily achievable barrier removal.

CASp – All Inspected Sites

For all inspected sites, the building owner or tenant is entitled to request a written inspection report and a numbered disability access inspection certificate indicating that the site has been inspected by a certified access specialist which may be posted on the property.


All or part of this facility located at

SAMPLE

has been inspected by a Certified Access Specialist (CASp).

ACCESS INSPECTED

THIS CERTIFICATE DOES NOT IMPLY THAT THIS FACILITY MEETS DESIGN AND CONSTRUCTION REQUIREMENTS FOR ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.

Inspection Date:
CASp Signature:
CASp Certificate #:
CASp Name:
(Please Print)
Inspection Certificate #:

www.dgs.ca.gov/dsa/Programs/progAccess.aspx

CASp Report Minimum Requirements

For a valid report:

- Date of evaluation
- Name and Contact Information of the individual requesting the inspection
- Name and Address of the property being inspected
- Statement of "CASp Determination Pending" or "CASp Inspected"
- When applicable, a list of items that were corrected for "Casp Inspected"
- A list of non-compliant features (for Casp Determination Pending) and correction needed.
- Statement on whether it includes an assessment on readily achievable barrier removal.
- a schedule for completion of corrections of non-compliant items to attach to the report
- Notice to Property Owners regarding safekeeping of CASp reports
- CASp signature and CASp number

Zachary Nathan Architect, AIA, CASp

Additional CASp report information recommended

- Summary of existing conditions and property description
- Scope of the survey
- A list of the published standards, guidelines, or documents to which the facility is being evaluated
- A list of non-compliant features as compared to the standard for compliance
- A permit history and description of applicable codes in effect at the time of the permit.
- Recommendations or options for how to remove barriers
- If applicable, an explanation of the terms "Readily Achievable Barrier Removal", "technically infeasible", and "unreasonable hardship"
- Photographs of site conditions
- Illustrations of the standards, guidelines and regulations.
- Plans of building, if available
- Cost estimate

Construction Related Accessibility Standards Compliance Act Protections

- **A 90-day stay of any legal action against you and an Early Evaluation Conference.** Businesses must have had accessibility services performed by a CASp before the defendant is served with a summons and complaint.

- **State Legislative Analyst Opinion**

"it is our opinion that a written inspection report must be completed by a CASp in order for defendant in any action that includes a construction-related accessibility claim to become entitled to relief under the provisions of the act."

Construction Related Accessibility Standards Compliance Act Protections

- **Multiple damages may not be recovered at a single facility.** CRASCA will help to ensure that damages may be claimed only when a plaintiff personally encountered a violation or was deterred from gaining access on a particular occasion. CRASCA clarifies that a denial of full and equal access constitutes one violation per distinct facility for purposes of damages. Damages may not be recovered for each and every single offense that may exist at the particular facility

Benefits of a CASp Survey

- 90 day stay from taking any further action and early evaluation conference for state court litigation.
- Less likelihood of litigation if CASp report is completed, certificate posted and barriers are removed.
- Completion of a CASp survey demonstrates a good faith effort.
- When architectural barriers are removed, customers with disabilities will be able to access and use the services of the business and bring their friends and relatives.

Zachary Nathan Architect, AIA, CASp

Certified Access Specialist Institute CASI

- Certified Access Specialist Institute is an organization of California Certified Access Specialists with about 150 members.
- **Mission**: CASI is the voice of access professionals as well as a resource for both its members and the public.
- **Goals Include:**
- ***Be an authoritative source:***
  Be the recognized leader for knowledge and implementation of local, state and federal access codes and laws.
- ***Serve as a credible voice:***
  Promote CASI as a credible voice for accessibility compliance through quality standards of practice.
- ***Promote access awareness:***
  Collaborate with government and advocacy organizations to promote access awareness.
- **Website:** http://www.casinstitute.org/

Example 1

- Steps at entrances to a building with 4 small retail shops along Clement Street.
- The City (Board of Appeals) would not allow the sidewalk to be raised to level of the interior floor at each shop even though this was the most cost effective solution.

Zachary Nathan Architect, AIA, CASp

Example 2

Hilly street with steep slope at storefront entrance

Zachary Nathan Architect, AIA, CASp

Example 3

Steep ramp at store entrance

Before – 18% slope

After - 8% slope

Zachary Nathan Architect, AIA, CASp

Status of CASp Program

- In effect for nearly 4 years
- The California Commission on Disability Access (CCDA) is reviewing the effectiveness of whether public & private inspection programs, including CASp, are meeting the business & disability community's needs, including timely competent inspections that properly identify violations and provide appropriate remedial measures .
- CCDA is developing a survey checklist for use of building inspectors and CASps and business owners.
- A new improved CASp certificate has recently been issued by the State in response to concerns of CASps.

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Hearing On The Impact of Americans With Disabilities (ADA) Based Lawsuits on Small Businesses

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Laws Governing Access Requirements

- Americans with Disabilities Act, Title III – Passed in 1990- effective date 01/26/92
- Unruh Civil Rights Act; California Disabled Persons Act – California Civil Code Sections 51-53, 54-55.2
- California Building Code, Title 24
- California Construction-Related Accessibility Standards Compliance Act (SB 1608)

Federal
Americans with Disabilities Act, Title III

- Nearly all access requirements of Title III are enforced by lawsuits brought by private individuals and not by the government
- On-going obligation: Businesses are subject to ADA access requirements whether there has been new construction or not
- No "grandfathering" exception to barrier removal
- Landlord/tenant share legal responsibility
- Requires barrier removal where "readily achievable"
- No letter, warning or notice is required as a precondition to filing of ADA access lawsuit

Barrier Removal Priorities

- On-going obligation for both Landlord and Tenant
- Priorities under Federal Regulation - 28 CFR 36.304(c)

1. access from sidewalk, parking or public transportation to entrance
2. access to goods/services, paths of travel
3. restroom access
4. remaining barriers e.g. telephones, ATM machines, drinking fountains

"Readily Achievable"

- Easily accomplishable and able to be carried out without much difficulty or expense
- Determining factors:
  - nature and cost
  - overall finances of the business / landlord RDE1
  - geographic proximity to parent entity
  - Size and finances of parent entity
  - (Last 2 factors don't apply to Small Businesses)

Slide 5

RDE1 Not sure if the last two items are relevant. Since most small business don't have parent entities. Unless you want to not that the seiral litigants are not targeting these types of businesses.
Regina Dick-Endrizzi, 7/19/2012

Burden of ADA to Small Businesses

- Most buildings built before 1990 contain barriers to access that can be removed
- Plaintiff prevails once he identifies barriers that can be removed in readily achievable manner
- A prevailing plaintiff can recover attorney's fees under ADA
- Amount of fees can exceed award of statutory damages recoverable under California law
- Small businesses are liable for fees, damages and must also pay for cost of repairs.

California Disabled Persons Act

- Prohibits discrimination on the basis of disability in any place to which the public is invited
- Requires "full and equal access"
- A violation of the ADA is deemed to be a violation of the Disabled Persons Act
- Statutory Minimum damages of $1,000 per offense and attorney fees

California Unruh Civil Rights Act

- Broad application – "All persons" entitled to "full and equal accommodations" in all businesses "of every kind whatsoever"
- A violation of ADA is also a violation of Unruh Act
- Minimum $4,000 damages for each offense and up to 3 times actual damages
- Attorney's fees recoverable by prevailing plaintiff

Connection Between ADA and Unruh Act

- Laws overlap, but a plaintiff can make a claim under both laws in one case
- ADA – injunction only; no money damages
- If plaintiff shows ADA violation, can obtain ***injunction*** under ADA, ***damages*** under Unruh Act, <u>and</u> recover ***attorney's fees***
- Cases can be filed in State or Federal Courts

S.B. 1608 - California Civil Code Sections 55.51-55.57

- Signed into law September 28, 2008.
- Established the Certified Access Specialist Program (CASp)
- Established the California Commission on Disability Access (CCDA)
- Set requirements for local agencies (building departments) to have CASps trained employees

S.B. 1608

- Provides that
  1. A business that obtains a Certified Access Specialist (CASp) evaluation of barriers
  2. And implements recommendations to remove barriers
  3. Can seek a stay of lawsuit if sued in State Court to pursue early settlement to keep litigation cost down
- Requires plaintiff to inform business of rights under SB 1608 after lawsuit is filed in State Court

S.B. 1608

- Clarifies that statutory damages available only if plaintiff personally encounters barrier that denies full and equal access
- Clarifies that statutory damages based on each occasion when access is denied and not on number of barriers encountered
- Makes settlement offers relevant to fee determinations

Lawsuit Prevention

- CASP report
  - 90-day stay before filing answer to complaint
  - May discourage "drive-by lawsuits"
  - Discoverable
- Replace exterior barriers first
  - Some litigants employ Google Earth / Maps to identify exterior barriers, such as parking spaces and entry ways

Potential Conflict Between SB 1608 and ADA

- SB 1608 is a State Law
- If provisions of SB 1608 *conflict* with ADA, federal law will likely pre-empt parts of 1608
- Issue could come up in cases filed in Federal Court
- Federal court will apply SB 1608 on damages issues
- Most access cases are now filed in Federal Court