

BOARD of SUPERVISORS



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March 3, 2016

File No. 150732

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

Dear Ms. Jones:

On February 23, 2016, Supervisor Katy Tang introduced the following substituted legislation:

File No. 150732

Ordinance amending the Building Code to require any existing building with a place of public accommodation either to have all primary entries and path of travel into the building accessible by persons with disabilities or to receive from the City a determination of equivalent facilitation, technical infeasibility, or unreasonable hardship; establishing a Disability Access Compliance Unit within the Department of Building Inspection; establishing a fee to offset the costs of the disability access improvement program; amending Administrative Code, Chapter 38, to require a building owner to give notice of the mandatory Building Code primary entry and path of travel accessibility requirements in any new or amended public accommodation lease; affirming the Planning Department's California Environmental Quality Act determination; making findings of local conditions under the California Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward the legislation to the California Building Standards Commission upon final passage.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

By: Linda Wong, Assistant Clerk

Attachment

c: Joy Navarrete, Environmental Planning
Jeanie Poling, Environmental Planning

Not considered a project under CEQA Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

1 [Building, Administrative Codes - Mandatory Disability Access Improvements; Building
2 Owner's Notice to Tenant; Administrative Fee]

3 **Ordinance amending the Building Code to require any existing building with a place of**
4 **public accommodation either to have all primary entries and path of travel into the**
5 **building accessible by persons with disabilities or to receive from the City a**
6 **determination of equivalent facilitation, technical infeasibility, or unreasonable**
7 **hardship, establishing a Disability Access Compliance Unit within the Department of**
8 **Building Inspection, establishing a fee to offset the costs of the disability access**
9 **improvement program; amending Administrative Code, Chapter 38, to require a**
10 **building owner to give notice of the mandatory Building Code primary entry and path of**
11 **travel accessibility requirements in any new or amended public accommodation lease;**
12 **affirming the Planning Department's California Environmental Quality Act**
13 **determination; making findings of local conditions under the California Health and**
14 **Safety Code, and directing the Clerk of the Board of Supervisors to forward the**
15 **legislation to the California Building Standards Commission upon final passage.**

16 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.
17 **Additions to Codes** are in *single-underline italics Times New Roman font*.
18 **Deletions to Codes** are in ~~*strikethrough-italics Times New Roman font*~~.
19 **Board amendment additions** are in double-underlined Arial font.
20 **Board amendment deletions** are in ~~strikethrough Arial font~~.

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

22 Section 1. Background and General Findings.

23 (a) The Planning Department has determined that the actions contemplated in this
24 ordinance comply with the California Environmental Quality Act (California Public Resources
25

1 Code Section 21000 et seq.). The Board of Supervisors hereby affirms this determination.
2 Said determination is on file with the Clerk of the Board of Supervisors in File No. _____
3 and is incorporated herein by reference.

4 (b) Pursuant to Charter Section D3.750-5, the Building Inspection Commission
5 considered this ordinance at a duly noticed public hearing held on February 17, 2016.

6 (c) Title III of the federal Americans with Disabilities Act of 1990 (42 USC Sections
7 12181 - 12189), known as "the ADA," requires that Places of Public Accommodation operated
8 by private entities be accessible to persons with disabilities. The ADA requires the removal of
9 architectural barriers in existing buildings to provide accessibility if barrier removal is readily
10 achievable. California's construction-related disability access requirements for Places of
11 Public Accommodation, found in Chapter 11B of the California Building Code as adopted and
12 amended by San Francisco, do not require existing buildings to be modified to conform to
13 current disability access requirements unless there is an application for a building permit.

14 In addition to these federal and state construction-related disability access
15 requirements, the Unruh Civil Rights Act (California Civil Code Sections 51 through 51.3)
16 requires that all business establishments provide "full and equal accommodations,
17 advantages, facilities, privileges, or services."

18 (d) In September 2008, the Construction-Related Accessibility Standards
19 Compliance Act ("Act") was added to the California Civil Code, at Sections 55.51 through
20 55.53. The Act authorizes an owner or tenant of a Place of Public Accommodation to have it
21 inspected by disability access specialists known as CASp Inspectors, who are certified by the
22 Division of State Architect. This inspection is intended to assist owners and tenants in
23 determining whether the site meets all applicable federal and state construction-related
24 accessibility requirements, as that term is defined in Section 55.52(a)(6) of the Act, or if, in the
25 opinion of the CASp Inspector, corrections are needed to achieve compliance with those

1 requirements. In determining compliance, state law applies unless federal law provides a
2 greater degree of accessibility. If corrections are needed, the CASp Inspector must identify
3 the areas that need correction and provide to the owner or tenant a schedule of completion
4 within a reasonable timeframe.

5 A CASp Inspection is not mandatory but if a property owner or tenant has obtained a
6 CASp Inspector's report and they or a successor owner or tenant are subsequently sued for
7 violation of construction-related accessibility requirements, the plaintiff must follow certain
8 procedures and owners and tenants are given some protection against liability and the
9 recovery of damages.

10 (e) In September 2012, with the passage of Ordinance 187-12, the City enacted
11 Chapter 38 of the Administrative Code. Chapter 38 requires that before a building owner
12 leases space to a small business for use as a public accommodation, the owner must either
13 (1) ensure that existing public restrooms, ground floor entrances, and ground floor exits are
14 accessible, if accessibility is required and readily achievable, or (2) provide written notice to
15 the prospective tenant that the property may not currently meet all construction-related
16 accessibility standards.

17 Section 38.1 of the Administrative Code states that the purposes of the new
18 requirements are to (1) ensure that small businesses operating public accommodations
19 comply with applicable disability access laws, (2) ensure clear communication between
20 landlords and small business tenants regarding their respective responsibilities for disability
21 access improvements, and (3) protect small business tenants from unforeseen expenses and
22 liabilities arising out of required disability access improvements.

23 (f) In its Annual Report to the Legislature dated January 31, 2015, the California
24 Commission on Disability Access reported that not having an accessible entry and path of
25 travel into a building was one of the top ten construction-related violations reported.

1 (g) The City has a strong interest in ensuring that (1) all Places of Public
2 Accommodation in San Francisco are in compliance with state and federal disability access
3 laws and (2) a building owner who leases all or portions of a building for use as a Place of
4 Public Accommodation assumes responsibility for bringing the building into compliance with
5 these laws. It is also in the public interest for owners and tenants of these buildings who
6 comply with construction-related accessibility requirements to gain some protection under
7 litigation arising from those requirements.

8 This Chapter 11D furthers these objectives by (1) requiring that the owner of a building
9 with a Place of Public Accommodation have the building inspected for compliance with
10 disability access requirements under specified circumstances, (2) mandating that either the
11 building have a Primary Entry or Entries and Accessible Entrance Route into the building that
12 is usable by persons with disabilities, or the building owner obtain a finding from the City that
13 compliance is technically infeasible or is an unreasonable hardship, and (3) encouraging
14 voluntary corrections to other noncomplying accessibility elements in the building.

15
16 Section 2. Findings of Local Conditions under California Health and Safety Code
17 Section 17958.7.

18 (a) San Francisco is a 49-square mile peninsula with many hills and steep streets.
19 The sidewalks are narrow, crowded, and often sloping; much of the building stock is old and
20 often was constructed to the property line and/or adjacent to the fronting sidewalk with no or
21 minimal setbacks.

22 (b) The City also has numerous defined neighborhood commercial districts, which
23 conveniently provide retail goods and services to neighborhood residents and workers as well
24 as visitors to the area. A common feature of these older neighborhood shopping areas is
25 small-scale development and a pattern of small buildings with a narrow frontage and a

1 continuous facade line that abuts the fronting sidewalk. Another common feature is the
2 commercial-residential mixed use of the buildings and a pattern of commercial space on the
3 ground floor with residential flats on the upper floors.

4 (c) This combination of sloping streets, narrow sidewalks, and an old stock of small,
5 multi-use buildings with narrow facades that were constructed to the property lines and/or
6 abutting sidewalk has resulted in a large number of San Francisco buildings providing
7 services to the public that have steps to the front entrance and other elements that do not
8 comply with federal and state disability access requirements.

9 (d) Building owners often require their tenants to assume the responsibility for
10 complying with code requirements and do not make disability access improvements
11 themselves. Disability access improvements often are not financially feasible for small
12 businesses with short-term leases; thus, the Building Code's assumption that disability access
13 and other building improvements will be made over time does not, in fact, always occur in
14 these buildings.

15 (e) According to the Data and Needs Analysis in the City's 2014 Housing Element,
16 in 2010 19 percent of San Francisco's population was 60 years of age and older, and both the
17 number and share of residents in that age bracket is projected to increase in the coming years
18 to account for more than 30 percent of the total population by 2040. The 2010 Census
19 estimated that 30 percent of all San Francisco households have one or more persons 65
20 years of age and older and that 40 percent of persons 65 and older have mobility or other
21 physical limitations. The 2010 Census also estimated that almost 49,000 non-institutionalized
22 adults in San Francisco have a physical disability.

23 (f) Section 11B-202.4 of the California Building Code ranks an accessible entrance
24 as the accessibility element that should be given the highest priority in making disability
25 access improvements to a building.

1 Section 3. The Building Code is hereby amended by adding Chapter 11D, to read as
2 follows:

3 Chapter 11D

4 MANDATORY ACCESSIBILITY IMPROVEMENTS FOR

5 BUILDINGS WITH A PLACE OF PUBLIC ACCOMMODATION

6 SECTION 1101D – SCOPE

7 Any building or portion of a building with a Place of Public Accommodation subject to the
8 requirements of Chapter 11B of this Code is within the scope of this Chapter.

9 Exception: A building that was constructed under a building or site permit application filed on
10 or after January 1, 2002.

11 A building constructed under the Building Code in effect on or after January 1, 2002 is
12 presumed to be accessible to persons with disabilities and will be exempt from this Chapter 11D upon
13 receipt by the Department of a written notice of exemption from the Owner or the Owner's authorized
14 agent that provides a construction permit application number dated on or after January 1, 2002 and
15 contact information for the Owner and/or Owner's authorized agent.

16 1101D.1. Compliance with Federal or State Laws. Nothing in this Chapter 11D is intended to
17 relieve the Owner or the operator of a Place of Public Accommodation of their obligation to comply
18 with the requirements of any Federal or State law, including but not limited to the Americans with
19 Disabilities Act, or to modify or extend the time for compliance with any such law.

20 1101D.2. Contractual obligations. Nothing in this Chapter 11D is intended to interfere with
21 any contractual obligations between the Owner of a building within the scope of this Chapter and any
22 lessee of space within the building.

23 SECTION 1102D – DEFINITIONS.

24 For the purposes of this Chapter 11D, the following definitions shall apply:
25

1 **“Accessible Entrance Route.”** An identifiable path of travel by means of which a Primary Entry
2 may be approached, entered and exited, and which connects the Primary Entry with an exterior
3 approach (including any adjacent sidewalks, streets and parking areas).

4 **“Building Official.”** The Director of the Department or the Director’s designee.

5 **“California Construction-Related Accessibility Standards Compliance Act.”** Sections 55.51
6 through 55.53 of the California Civil Code as amended from time to time.

7 **“California Historical Building Code.”** Part 8 of Title 24, California Code of Regulations.

8 **“CASp Inspector.”** A person who has been certified by the State of California as a certified
9 access specialist authorized to inspect a Place of Public Accommodation for compliance with
10 construction-related accessibility standards.

11 **“Checklist for Alterations to Commercial Storefront for Accessibility.”** A Checklist developed
12 by or with the input of City departments or agencies with review authority over the subject buildings.

13 **“Department.”** The Department of Building Inspection.

14 **“Design Professional.”** A “Registered Design Professional” as defined in Chapter 2 of the
15 Building Code.

16 **“Disability Access Compliance Unit” or “Compliance Unit.”** The Unit within the Department
17 established under Section 1112D of this Chapter.

18 **“Equivalent Facilitation.”** As defined in Chapter 2 of the Building Code.

19 **“Historic Resource.”** A building designated pursuant to Articles 10 and 11 of the Planning
20 Code, listed on or determined eligible for listing on the California Register of Historic Resources or the
21 National Register of Historic Places, or that is a ‘qualified historical building’ as defined in the
22 California Historical Building Code.

23 **“Inspector.”** A CASp Inspector or a Design Professional approved by the Building Official as
24 qualified to evaluate compliance with disability access requirements.

25 **“Owner.”** The owner of a building within the scope of this Chapter 11D.

1 **“Place of Public Accommodation.”** As defined in Section 55.52 of the California Construction-
2 Related Accessibility Compliance Act and 42 USC Section 12181(7) of the Americans with Disabilities
3 Act of 1990, as those Acts are amended from time to time.

4 **“Primary Entry.”** As defined in Chapter 2 of this Code, the principal entrance through which
5 most people enter the building, as designated by the Building Official. If there are multiple commercial
6 tenants or spaces, a building may have multiple Primary Entries.

7 **“Technically Infeasible.”** As defined in Chapter 2 of the Building Code.

8 **“Technical Infeasibility.”** A Code requirement is Technically Infeasible.

9 **“Unreasonable Hardship.”** As defined in Chapter 2 of the Building Code.

10 **SECTION 1103D – COMPLIANCE CATEGORIES**

11 The Department shall assign each building within the scope of this Chapter 11D to one of the
12 following four categories. If a building does not clearly fall within one of these categories, the Building
13 Official shall assign it to the category he or she determines is the most appropriate. The Building
14 Official’s decision is appealable to the Building Inspection Commission pursuant to Section 77.3(b) of
15 the Administrative Code.

16 **Category One: The Primary Entry or Entries and the Accessible Entrance Route(s) comply**
17 **with Code requirements. A building qualifies under Category One if any of the following descriptions**
18 **applies:**

19 (a) A building or portion thereof was constructed or altered under a permit application filed
20 prior to July 1, 1982, and all Primary Entries and Accessible Entrance Routes are in compliance with
21 the requirements of the 1998 California Building Code.

22 (b) A building or portion thereof was constructed or altered under a permit application filed
23 on or after July 1, 1982 and prior to January 1, 2002, all Primary Entries and Accessible Entrance
24 Routes are in compliance with the requirements of the 1998 California Building Code or a later
25 Building Code in effect at the time of any permit application for a tenant improvement or other

1 alteration, and the Department gave final approval of the accessible entry work under the construction
2 permit or any alteration permits.

3 (c) A building is eligible to use the California Historical Building Code, a permit
4 application was filed on or after January 1, 1995, all Primary Entries and Accessible Entrance Routes
5 are in compliance with the California Historical Building Code in effect at the time of the permit
6 application, and the Department gave final approval of the accessible entry work under the
7 construction permit or any alteration permits.

8 Category Two: There are no steps to the Primary Entry or Entries and one or more elements
9 of the Primary Entry or Entries or the Accessible Entrance Route(s) do not comply with Code
10 requirements. A building qualifies under Category Two if any of the following descriptions applies:

11 (a) A building or portion thereof was constructed or altered under a permit application filed
12 prior to July 1, 1982, the building has a Primary Entry or Entries with no steps, and one or more
13 elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance
14 with the requirements of the 1998 California Building Code.

15 (b) A building or portion thereof was constructed or altered on or after July 1, 1982 and
16 prior to January 1, 2002, the building has a Primary Entry or Entries with no steps, and one or more
17 elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance
18 with the requirements of the 1998 California Building Code or a later Building Code in effect at the
19 time of any permit application for a tenant improvement or other alteration, or the Department did not
20 give final approval of the accessible entry work under the construction permit or any alteration permit.

21 (c) A building is eligible to use the California Historical Building Code, a permit
22 application was filed on or after January 1, 1995, the Primary Entry or Entries has no steps, and one
23 or more elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in
24 compliance with the California Historical Building Code in effect at the time of permit application, or
25

1 the Department did not give final approval of the accessible entry work under a construction permit or
2 any alteration permit.

3 **Category Three: There is one step to the Primary Entry or Entries and one or more elements**
4 **of the Primary Entry or Entries or the Accessible Entrance Route(s) do not comply with Code**
5 **requirements. A building qualifies under Category Three if the building or portion thereof was**
6 **constructed or altered under a permit application filed prior to July 1, 1982, the Department gave final**
7 **approval of the work under the permit, the building has a Primary Entry or Entries with one step and**
8 **one or more elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in**
9 **compliance with the requirements of the 1998 California Building Code.**

10 **Category Four: The building has a Primary Entry or Entries with more than one step and**
11 **one or more elements of the Primary Entry or Entries and/or the Accessible Entrance Route(s) do**
12 **not comply with minimum Code requirements. A building qualifies under Category Four if the**
13 **building or portion thereof was constructed or altered under a permit application filed prior to July 1,**
14 **1982, the building has a Primary Entry or Entries with more than one step, and one or more elements**
15 **of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance with the**
16 **requirements of the 1998 California Building Code, or the Department did not give final approval of**
17 **the accessible entry work under the construction permit.**

18 **SECTION 1104D – INSPECTION AND SUBMISSION OF PRIMARY ENTRY COMPLIANCE**
19 **CHECKLIST**

20 **1104D.1. Category One Buildings. The Owner of a building classified in Section 1103D as**
21 **Category One shall obtain an inspection of the elements on the Department's Category One Primary**
22 **Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section**
23 **1107D, the Owner shall submit to the Department's Disability Access Compliance Unit a copy of the**
24 **Checklist completed and signed by the person who performed the inspection and including his or her**
25

1 business contact information and a professional stamp, CASp number, or California State License
2 Bureau contractor's license number, whichever is applicable.

3 If any elements on the Checklist are found by the Inspector or licensed general contractor to be
4 not in compliance with the standards for accessible entries set forth in the applicable California
5 Building Code or California Historical Building Code, or the Department did not give final approval of
6 the accessible entry work, the noncomplying elements shall be clearly specified in detail, the building
7 shall be reassigned by the Building Official to the appropriate Category, and the Owner shall comply
8 with all requirements of that Category. The Building Official's decision is appealable to the Building
9 Inspection Commission pursuant to Section 77.3(b) of the Administrative Code.

10 **1104D.2. Category Two Buildings.** The Owner of a building classified in Section 1103D as
11 Category Two shall obtain an inspection of the elements on the Department's Category Two Primary
12 Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section
13 1107D, the Owner shall submit to the Department's Disability Access Compliance Unit a copy of the
14 Checklist completed and signed by the person who performed the inspection and including his or her
15 business contact information and a professional stamp or CASp number.

16 Each element on the Checklist found by the Inspector to be not in compliance with the
17 applicable standards for accessible entries set forth in the applicable Building Code or California
18 Historical Building Code, including a failure to obtain final Department approval of the accessible
19 entry work, shall be specified in detail and one of the following four options selected by the Owner as
20 the method by which the Owner will address the Code deficiency within the time specified for
21 compliance in Section 1107D:

22 (a) **Option 1.** The Owner shall submit to the Disability Access Compliance Unit:

23 (1) **Plans showing how the non-complying element or elements will be brought into**
24 full compliance with the applicable standards for accessible entries set forth in either the California
25 Building Code or the California Historical Building Code, and.

1 (2) If the Owner elects to use the California Historical Building Code,
2 documentation showing that the building is qualified to use the California Historical Building Code.

3 The Owner must subsequently apply for and obtain a building permit to do the required work
4 within the time specified for compliance in Section 1107D.

5 (b) Option 2. The Owner shall submit to the Disability Access Compliance Unit:

6 (1) Plans, drawings, or other documentation required by the Compliance Unit
7 demonstrating that bringing the non-complying element or elements into full compliance with the
8 applicable Code standards for accessible entries is Technically Infeasible, and

9 (2) Plans, drawings, a written explanation, or other documentation required by the
10 Compliance Unit showing what Equivalent Facilitation will be provided.

11 The Owner must subsequently apply for and obtain a building permit to do the work required
12 within the time specified for compliance in Section 1107D.

13 (c) Option 3. The Owner shall submit to the Disability Access Compliance Unit a Request
14 for Approval of an Unreasonable Hardship form together with plans, drawings, a written explanation,
15 or other documentation required by the Compliance Unit showing what Equivalent Facilitation will be
16 provided. The Compliance Unit will review the request and either approve or deny it, and then forward
17 the request and equivalency submittal information to the Access Appeals Commission for a hearing
18 pursuant to Section 1110D and Section 105A.3.3 of this Code.

19 The Owner must subsequently apply for and obtain a building permit to do the work required
20 within the time specified for compliance in Section 1107D.

21 (d) Option 4. The Owner shall submit to the Disability Access Compliance Unit a statement
22 of intent to request a hearing by the Access Appeals Commission to review the matter pursuant to
23 Section 1110D and Section 105A.3.3 of this Code.

1 The request for a hearing by the Access Appeals Commission shall be submitted pursuant to the
2 procedures of Section 105A.3 of this Code and in sufficient time to obtain a decision prior to the other
3 compliance timelines in Table 1107D.

4 **1104D.3. Category Three Buildings.** The Owner of a building classified in Section 1103D as
5 Category Three shall obtain an inspection of the elements on the Department's Category Three
6 Primary Entry Compliance Checklist by an Inspector (as defined in Section 1102D). On or before the
7 time for compliance specified in Section 1107D, the Owner shall submit to the Department's Disability
8 Access Compliance Unit a copy of the Checklist completed and signed by the person who performed the
9 inspection and including his or her business contact information and a professional stamp or CASp
10 number.

11 Each element on the Checklist found by the Inspector to be not in compliance with the
12 applicable standards for accessible entries set forth in the applicable California Building Code or
13 California Historical Building Code shall be specified in detail and one of the options set forth in
14 Section 1104D.2 (a) through (d) selected by the Owner as the method by which the Owner will address
15 the Code deficiency within the time specified for compliance in Section 1107D.

16 **1104D.4. Category Four Buildings.** The Owner of a building classified in Section 1103D as
17 Category Four shall obtain an inspection of the elements on the Department's Category Four Primary
18 Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section
19 1107D, the Owner shall submit to the Department's Disability Access Compliance Unit a copy of the
20 Checklist completed and signed by the person who performed the inspection and including his or her
21 business contact information and a professional stamp or CASp number.

22 Each element on the Checklist found by the Inspector to be not in compliance with the
23 applicable standards for accessible entries set forth in the applicable California Building Code or
24 California Historical Building Code shall be specified in detail and one of the options set forth in
25

1 Section 1104D.2 (a) through (d) selected by the Owner as the method by which the Owner will address
2 the Code deficiency within the time specified for compliance in Section 1107D.

3 **SECTION 1105D – EQUIVALENT FACILITATION; TECHNICAL INFEASIBILITY, OR**
4 **UNREASONABLE HARDSHIP.**

5 **1105D.1. Equivalent Facilitation.** The Department shall develop an Approved Barrier Removal
6 Standard in consultation with the Access Appeals Commission, the Planning Department, and the
7 Department of Public Works. The Disability Access Compliance Unit shall maintain the Approved
8 Barrier Removal Standard and review any proposal for Equivalent Facilitation under this Chapter 11D
9 for compliance with that Standard. Any proposal for Equivalent Facilitation that does not comply with
10 the Approved Barrier Removal Standard must be approved by the Access Appeals Commission.

11 **1105D.2. Technically Infeasible.** A request for a finding that compliance is Technically
12 Infeasible can be based upon either a structural or a non-structural condition.

13 **(a) Structural Technical Infeasibility.** A structural Technical Infeasibility is an existing
14 condition of the building where full compliance would require the removal or alteration of a load-
15 bearing structural element that is an essential part of the structural frame.

16 **(b) Non-structural Technical Infeasibility.** A non-structural Technical Infeasibility may
17 include conditions where full compliance would require encroaching into the required egress width,
18 interfering with pedestrian use of the sidewalk or a permanent easement, and similar conditions that do
19 not impact the structural elements or frame. The Disability Access Compliance Unit shall compile a list
20 of non-structural conditions that the Department would accept as supporting a request for a finding of
21 Technical Infeasibility and provide other written guidance, and may require that a request based on a
22 non-structural condition be ratified by the Access Appeals Commission pursuant to Section 105A.3.3 of
23 this Code.

24 **1105D.2.1. Acceptance of previously-granted determinations of Technical**
25 **Infeasibility.** Under the California Building Code, all findings of Technical Infeasibility must be

1 documented by the Department and can only be made on a case-by-case basis. The Department will
2 accept and record a previously-approved finding of Technical Infeasibility for a building within the
3 scope of this Chapter 11D if: (1) the finding of Technical Infeasibility was approved by the Department
4 and can be documented, (2) the finding of Technical Infeasibility is applicable to the elements covered
5 by this Chapter 11D, and (3) an Inspector has submitted written documentation acceptable to the
6 Department that all conditions and requirements of the Technical Infeasibility are unchanged and
7 remain applicable.

8 **1105D.3. Unreasonable Hardship.** The Compliance Unit, in consultation with the Access
9 Appeals Commission, shall develop and publish guidelines specifying the conditions under which an
10 Unreasonable Hardship would be approved by the Department. All Unreasonable Hardships must be
11 ratified by the Access Appeals Commission pursuant to Section 11B-202.4, Exception 8, and Section
12 1.9.1.5 of the California Building Code.

13 **SECTION 1106D – BUILDING PERMIT REQUIRED; INSPECTION AND COMPLETION OF**
14 **WORK; VALUATION APPLIED TO FUTURE PROJECTS**

15 **1106D.1. Building permit required.** A building permit is required to make any and all
16 modifications to a building either mandated or authorized by this Chapter 11D. All work required by
17 this Chapter 11D shall be considered by the Department to be barrier removal and no additional path
18 of travel upgrade shall be required. Only those elements that are actually altered will be required to
19 comply with the current requirements of this Code.

20 **1106D.1.1. Historic Resources.**

21 (a) For a building considered to be a Historic Resource, the plans submitted with
22 the building permit application shall be prepared in conjunction with a Design Professional and in
23 compliance with the California Historical Building Code, requirements of the San Francisco Planning
24 Department, and guidelines developed and published by the Compliance Unit.

1 **(b) As required by Articles 10 and 11 of the Planning Code, a permit application for**
2 **a Historic Resource designated pursuant to Article 10 or 11 of the Planning Code must be approved by**
3 **the Historic Preservation Commission unless delegated for review and approval without a hearing to**
4 **Planning Department staff.**

5 **1106D.2. Alteration work that may be included in the permit application. The only work that**
6 **may be included in the permit required by Section 1106D.1 is: (a) the work to a Primary Entry or**
7 **Accessible Entrance Route mandated by Section 1104D or (b) any voluntary disability access**
8 **improvements authorized by Section 1109D.**

9 **1106D.3. Inspection of work. All work completed by permit under Option 1 of Section 1104D.2**
10 **for Category Two, Category Three, and Category Four buildings shall be inspected by the**
11 **Department's field inspector that is assigned to that district. If the work complies with requirements of**
12 **this Chapter 11D, the inspector shall issue to the Owner a Certificate of Final Completion stipulating**
13 **that the work complies with the requirements and shall provide a copy of the Certificate of Final**
14 **Completion to the Disability Access Compliance Unit. Upon request, the Owner may obtain a final**
15 **inspection and approval by a Department inspector who is certified as a CASp Inspector; the**
16 **inspection fee set forth in Table IA-D of Section 110 of this Code shall apply.**

17 **All work completed by permit under Options 3 and 4 of Section 1104D.2 for Category Two,**
18 **Category Three, and Category Four buildings shall be inspected by a Department CASp Inspector. If**
19 **the work complies with requirements of this Chapter 11D, the inspector shall issue to the Owner a**
20 **Certificate of Final Completion stipulating that the work complies with the requirements of this**
21 **Chapter and shall list his or her CASp number where applicable on both the Certificate of Final**
22 **Completion and the completed job card.**

23 **1106D.4. Completion of work; Certificate of Final Completion. Notwithstanding any other**
24 **provision of this Code, all work mandated by this Chapter 11D must be completed within 18 months of**
25 **the date an application for a building permit is required to be filed unless an extension of time is**

1 granted pursuant to Section 1108D. Any Certificate issued by the Department upon final completion of
 2 the work required by this Chapter 11D shall state that compliance is with Chapter 11D of this Code
 3 and not with the requirements of either the Americans with Disability Act or the California Building
 4 Code.

5 1106D.5. Valuation applied to future projects. As authorized by the Building Code, the
 6 valuation of both the mandatory and the voluntary disability access improvements performed under this
 7 Chapter 11D may be used to comply with path of travel upgrade requirements in Building Code Section
 8 11B-202.4 Exception #8 of this Code for any future project within the same building or portion of a
 9 building for a period of time not to exceed four years from the completion date of the work; provided,
 10 however, that only the valuation of the work described in 1106D.2 (a) or (b) shall be allowed for this
 11 purpose. In order to use the valuation of voluntary disability improvements for this purpose, the Owner
 12 must follow the recommended order of priority for making accessibility improvements set forth in
 13 Section 11B-202.4 of this Code.

14 **SECTION 1107D – COMPLIANCE SCHEDULE; OPTION TO COMPLY WITH CURRENT**
 15 **CODE REQUIREMENTS**

16 The time for compliance with the requirements of this Chapter 11D are set forth in the following
 17 Table 1107D. The Owner of a building within the scope of this Chapter must submit all required forms,
 18 documents and permit applications to the Department prior to the deadlines set forth in Table 1107D
 19 but may comply with the requirements of this Chapter 11D, or elect to comply with the requirements
 20 and procedures of the Building Code then in effect, at any time prior to the deadlines set forth in Table
 21 1107D.

22 **TABLE 1107D**
 23 **COMPLIANCE SCHEDULE¹**

	<u>Submit compliance Checklist and</u>	<u>File application for required</u>	<u>Obtain required building permit(s)²</u>
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	<u>specify compliance Option</u>	<u>building permit(s)</u>	
<u>Category One Buildings</u>	<u>12</u>	<u>N/A</u>	<u>N/A</u>
<u>Category Two Buildings</u>	<u>12</u>	<u>15</u>	<u>21</u>
<u>Category Three Buildings</u>	<u>24</u>	<u>27</u>	<u>33</u>
<u>Category Four Buildings</u>	<u>30</u>	<u>33</u>	<u>39</u>

¹Unless otherwise specified, time period is in months measured from the effective date of this Chapter 11D.

²Pursuant to Section 1106D.4, all mandated work must be completed within 18 months of the date an application for a building permit is required to be filed unless an extension of time of time is granted.

SECTION 1108D – EXTENSIONS OF TIME

(a) For good cause shown, the Building Official may grant one extension of time for up to six months from the compliance timelines in Table 1107D. For good cause shown, one or more additional extensions of time may be granted by the Access Appeals Commission pursuant to Section 1110D; provided, however, that in no event shall the Commission extend the time to complete the mandatory work required by this Chapter 11D beyond six years from the effective date of this Chapter 11D. The Commission’s decision shall be final.

(b) A written request for an extension of time shall be submitted to the Department or to the Access Appeals Commission prior to the time for compliance.

(c) For purposes of this Chapter 11D, good cause may include but is not limited to:

(1) The pendency of a request for a finding of Equivalent Facilitation or Technical Infeasibility;

(2) The desirability of coordinating the mandatory work required by this Chapter 11D with voluntary disability access improvements;

(3) Financial hardship;

1 (4) A legal hardship such as an existing lease; or

2 (5) A undue procedural delay by the Department or another reviewing City agency.

3 **SECTION 1109D – VOLUNTARY DISABILITY ACCESS IMPROVEMENTS**

4 In addition to the mandatory requirements of this Chapter 11D, the Owner may elect to make
5 additional corrections to the building or a portion thereof to comply with other State or Federal
6 disability access requirements.

7 **SECTION 1110D – APPEAL PROCEDURE**

8 Any procedure provided under this Code to appeal accessibility issues is available in order to
9 achieve compliance with this Chapter 11D. In addition, appeals to the Access Appeals Commission
10 may be made in accordance with the provisions of this Chapter 11D and 105A.3 of this Code.

11 **SECTION 1111D – ENFORCEMENT**

12 Whenever the Owner of a building within the scope of this Chapter 11D fails to undertake or
13 complete any action required by this Chapter within the time for compliance set forth in Table 1107D,
14 the Owner shall be considered to be in violation of this Code and the Building Official is authorized to
15 abate the violation in accordance with Section 102A of this Code.

16 **SECTION 1112D. DISABILITY ACCESS COMPLIANCE UNIT**

17 The Building Official shall establish within the Department a Disability Access Compliance
18 Unit to enforce this Chapter 11D and to perform such other duties as the Building Official shall
19 require. The Unit shall have at least one CASp Inspector from the Department and such other
20 departmental employees as the Building Official deems appropriate. The Compliance Unit shall consult
21 and coordinate with other City agencies with review authority over the permits necessary to comply
22 with the requirements of this Chapter, including but not limited to the Planning Department and
23 Department of Public Works, and any other City agencies that the Building Official determines are
24 necessary or desirable to achieve the purposes of this Chapter.

1 The Compliance Unit shall track and maintain records; coordinate review of checklists,
2 documents, and permits; provide information to the owners of buildings subject to this Chapter, tenants
3 of said buildings, and members of the public; provide guidance, training and assistance to the
4 Department's plan review staff and field inspectors; develop the informational material described in
5 Section 1113D; and provide such progress reports on the effectiveness of this Chapter as the
6 Compliance Unit deems appropriate or as the Building Official or the Access Appeals Commission may
7 require.

8 **SECTION 1113D – COORDINATION WITH OTHER CITY AGENCIES; REPORT TO THE**
9 **BOARD OF SUPERVISORS**

10 **1113D.1. Coordination with Other Agencies.** The Department shall coordinate with the
11 Planning Department, the Department of Public Works, and other City departments with review
12 authority over the accessibility improvements mandated or authorized by this Chapter 11D, as well as
13 with the Office of Small Business, the Mayor's Office on Disability, and other appropriate City
14 agencies, to develop and implement (1) outreach tools, (2) pre-screening procedures, (3) methods to
15 streamline the process, (4) proposed Code revisions, and (5) administrative bulletins, brochures,
16 checklists, and guidelines or other documents to implement the purpose and objectives of this Chapter.
17 The Checklist for Alterations to Commercial Storefront for Accessibility in existence on the effective
18 date of this Chapter 11D, as amended from time to time, and other guidance documents shall be used to
19 review and approve the disability access improvements mandated or authorized by this Chapter 11D.

20 **1113D.2. Report to the Board of Supervisors.** Within one year from the effective date of this
21 Chapter 11D, and following consultation and coordination with other appropriate City departments
22 and agencies, the Department shall submit a report in writing to the Board of Supervisors concerning
23 the effectiveness of this Chapter and including recommendations, if any, for amendments to this
24 Chapter. A progress report shall be submitted to the Board of Supervisors once a year thereafter until
25 completion of this Chapter's disability access improvement program.

1 **SECTION 1114D. NOTICE**

2 The Department shall post on its website the requirements of this Chapter 11D. The Department
3 shall also prepare any administrative bulletins, brochures, or other materials that the Building Official
4 determines are necessary or desirable to notify property owners and tenants about the requirements of
5 this Chapter and shall coordinate with the Office of Small Business and, in the Building Official's
6 discretion, other City departments concerning appropriate methods for providing notice about the
7 requirements.

8 **SECTION 1115D. ADMINISTRATIVE FEE**

9 In addition to any other permit fees that may apply, the Department shall charge the Owner of
10 each property within the scope of this Chapter 11D an administrative fee to compensate the
11 Department for the cost of the services necessary to implement and enforce Chapter 11D's disability
12 access improvement program. The administrative fee shall be the Standard Hourly Rate for
13 Administration set forth in Table 1A-D of this Code. The administrative fee is payable within 30 days of
14 the Department's notice that payment is due.

15
16 Section 4. The Building Code is hereby amended by revising Section 105A.3, to read
17 as follows:

18 **SEC. 105A.3 Access Appeals Commission.**

19 **105A.3.1 Establishment; composition; purpose.** Pursuant to the provisions of
20 Section 19957.5 of the Health and Safety Code of the State of California, there is hereby
21 established an Appeals Board to be known as the Access Appeals Commission composed of
22 five members to hear written appeals brought by any person regarding action taken by the
23 Department in the enforcement of the requirements of Part 5.5 (commencing with Section
24 19955), Division 13 of the Health and Safety Code of the State of California, including the
25

1 exceptions contained in Section 19957 thereof, as well as action taken by the Department in
2 the enforcement of the disability access and adaptability provisions of this code.

3 * * * *

4 **105A.3.3 Powers and duties; finality.** The Access Appeals Commission shall conduct
5 hearings on written appeals made under Section 105A.3.4 hereof. In hearing such appeals,
6 the Access Appeals Commission may approve or disapprove the Department's interpretations
7 of Part 5.5, Division 13 of the Health and Safety Code of the State of California and of the
8 disability access and adaptability requirements of this code and actions taken by the
9 Department to enforce said requirements and abate violations. The Commission shall also make
10 determinations on equivalent facilitation, technical infeasibility, unreasonable hardship, extensions of
11 time, and such other matters as Chapter 11D – Mandatory Accessibility Improvements for Buildings
12 with a Place of Public Accommodation may require or authorize. All such approvals or disapprovals
13 shall be final and conclusive as to the Department, in the absence of fraud or prejudicial
14 abuse of discretion. See Section 110A, Table 1A-K – Penalties, Hearings, Code Enforcement
15 Assessments – for applicable fee.

16 * * * *

17 Section 5. The Administrative Code is hereby amended by revising Section 38.3, to
18 read as follows:

19 **SEC. 38.3. DISABILITY ACCESS IMPROVEMENTS; NOTICE OF DISABILITY ACCESS**
20 **OBLIGATIONS.**

- 21 (a) Before entering into or amending a Lease, a Commercial Landlord shall either:
- 22 (1) Ensure that existing public restrooms, ground floor entrances, and ground
23 floor exits are accessible by removing all architectural barriers to disability access, to the
24 extent that such improvements are required by and "readily achievable, i.e., easily
25 accomplishable and able to be carried out without much difficulty or expense" within the

1 meaning of any applicable provisions of Title 28, Sections 36.304 and 36.305, of the Code of
2 Federal Regulations; or,

3 (2) Provide written notice to any prospective Small Business Tenant that the
4 property may not currently meet all applicable construction-related accessibility standards,
5 including standards for public restrooms and ground floor entrances and exits.

6 (3) Provide written notice to any prospective Small Business Tenant of the
7 mandatory requirements of Chapter 11D of the Building Code that are applicable to all places of
8 public accommodation.

9
10 Section 6. Effective and Operative Dates.

11 (a) This ordinance shall become effective 30 days after enactment. Enactment
12 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
13 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
14 overrides the Mayor's veto of the ordinance.

15 (b) This ordinance shall become operative 60 days after enactment.

16
17 Section 7. Directions to Clerk. The Clerk of the Board of Supervisors shall forward a
18 copy of this ordinance to the California Building Standards Commission upon its enactment.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:

23 
24 JUDITH A. BOYAJIAN
25 Deputy City Attorney

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LEGISLATIVE DIGEST
(Substituted 2/23/2016)

[Building, Administrative Codes - Mandatory Disability Access Improvements; Administrative Fee]

Ordinance amending the Building Code to require any existing building with a place of public accommodation either to have all primary entries and path of travel into the building accessible by persons with disabilities or to receive from the City a determination of equivalent facilitation, technical infeasibility, or unreasonable hardship, establishing a Disability Access Compliance Unit within the Department of Building Inspection, establishing a fee to offset the costs of the disability access improvement program; amending Administrative Code, Chapter 38, to require a building owner to give notice of the mandatory Building Code primary entry and path of travel accessibility requirements in any new or amended public accommodation lease; affirming the Planning Department's California Environmental Quality Act determination; making findings of local conditions under the California Health and Safety Code, and directing the Clerk of the Board of Supervisors to forward the legislation to the California Building Standards Commission upon final passage.

Existing Law

Chapter 11B of the Building Code contains disability access requirements adopted by the State of California applicable to the construction and alteration of commercial buildings and other uses that are "places of public accommodation." Title III of the Americans with Disabilities Act (known as the "ADA") also requires that "places of public accommodation" be accessible to persons with disabilities. In addition to federal and state construction-related disability access requirements, the Unruh Civil Rights Act (California Civil Code Section 51 through 51.3) requires that all business establishments provide "full and equal accommodations, advantages, facilities, privileges, or services."

Chapter 38 of the Administrative Code requires that before a building owner leases space to a small business for use as a public accommodation, the owner must either (1) ensure that existing public restrooms, ground floor entrances, and ground floor exits are accessible, if accessibility is required and readily achievable, or (2) provide written notice to the prospective tenant that the property may not currently meet all construction-related accessibility standards.

While the ADA requires the removal of architectural barriers in existing buildings to provide accessibility if barrier removal is readily achievable, California's construction-related disability access requirements are triggered only upon application for a permit to construct or modify a building. California Health and Safety Code Section 17958.7 authorizes the City to enact more restrictive requirements than the State Building Code but requires the Board of Supervisors to

make a finding that any modifications to the State law are reasonably necessary because of climatic, geological, or topographical conditions.

Amendments to Current Law

This ordinance adds Chapter 11D to the Building Code to require that the primary entry or entries and path of travel into any existing building with a "place of public accommodation" be inspected and either comply with minimum accessibility standards or receive from the City a determination that "equivalent facilitation" has been achieved or that compliance is "technically infeasible" or would be an "unreasonable hardship," as those terms are defined in the Building Code. A building that was constructed under the Building Code in effect on or after January 1, 2002 is presumed to be accessible and exempted from the scope of Chapter 11D. Since Chapter 11D is more restrictive than State law, the Board of Supervisors is required to make the findings of local conditions and forward the legislation to the State Building Standards Commission upon enactment. Chapter 38 of the Administrative Code is amended to provide that the required written notice also inform a Small Business Tenant of the mandatory requirements of Chapter 11D of the Building Code.

Buildings within the scope of Chapter 11D are put into four compliance categories. The Compliance Schedule in Table 1107D provides deadlines for (1) submitting information to the Building Department, (2) filing an application for the building permits required to do any mandatory upgrades, and (3) obtaining the required building permits. All mandated work must be completed within 18 months of the date an application for a building permit is required to be filed. The Building Official may grant one extension of time for no more than six months from the compliance deadlines; any additional extensions of time must be granted by the Access Appeals Commission. In no event may the time to complete the mandatory work be extended beyond six years from the effective date of Chapter 11D. To encourage voluntary upgrades to disability access elements, in addition to those mandated for the Primary Entry or Entries and Accessible Entrance Route(s), the valuation of both the mandatory disability access improvements and any additional voluntary improvements that follow the Building Code's recommended order of priority may be used to comply with future path of travel upgrade requirements.

If unable to comply with the mandated Code requirements, the building owner may request a determination of equivalent facilitation, technical infeasibility, or unreasonable hardship. The Building Department, in consultation with the Access Appeals Commission and other City departments or agencies, will develop standard guidelines and other documents to be used for making these determinations. A request that does not comply with these standards will have to be approved by the Access Appeals Commission.

A Disability Access Compliance Unit will be established within the Building Department to enforce the requirements of Chapter 11D and to perform such other duties as the Director of the Department requires. The Compliance Unit will have at least one Building Department CASp Inspector and will consult and coordinate with representatives from the Planning

Department, Department of Public Works, and other City agencies with review authority over the permits required to comply with Chapter 11D or that the Director of the Building Department determines should be included. In addition to any duties that the Director of the Building Department may assign to the Compliance Unit, the Unit will track and maintain records; coordinate review of checklists, documents, and permits; provide information on Chapter 11D's requirements to building owners and tenants, as well as to members of the public; provide guidance, training and assistance to the Building Department's plan review staff and field inspectors; and develop informational material. In addition to any other permit fees that may apply, the Department will charge the owner of each property within the scope of Chapter 11D the administrative fee in Table 1A-D of the Building Code to compensate the Department for the costs of the disability access improvement program.

The requirements of Chapter 11D become operative 60 days after enactment. Within one year of the Chapter's effective date, the Building Department must submit a written report to the Board of Supervisors concerning the effectiveness of Chapter 11D and include any recommendations for amendments. A progress report must be submitted to the Board once a year thereafter until completion of the disability access improvement program.

Chapter 11D expressly states that nothing in the Chapter is intended to (1) relieve the owner or operator of a place of public accommodation of their obligation to comply with the requirements of any Federal or State law, including but not limited to the Americans with Disabilities Act, or to modify or extend the time for compliance with any such law or (2) interfere with any contractual obligations between the owner of a building within the scope of Chapter 11D and any lessee of space within the building.

Background Information

California Building Code Section 11B-202.4 ranks an accessible entrance as the accessibility element that should be given the highest priority in making disability access improvements. However, the California Commission on Disability Access has found that not having an accessible entry and path of travel into the building is one of the top ten construction-related violations. Because of San Francisco's hilly topography, narrow sloping sidewalks, old building stock with narrow facades, and buildings often constructed to the property lines and/or adjacent to the fronting sidewalk, San Francisco has many buildings housing places of public accommodation that have either inaccessible front entries, inaccessible access routes into the building, or both. Building owners often require their tenants to assume the responsibility for complying with code requirements but disability access improvements often are not financially feasible for small businesses with short-term leases. Thus, the Building Code's assumption that disability access and other improvements will be made over time does not, in fact, always occur in these buildings. The challenges of San Francisco's topography and built environment are the local conditions supporting the enactment of more restrictive requirements than the State Building Code.

The City has a strong interest in ensuring that (1) all places of public accommodation in San Francisco are in compliance with state and federal disability access laws and (2) building owners who lease all or portions of their buildings for use as places of public accommodation assume responsibility for either bringing their buildings into compliance with these laws or obtaining a determination from the City that compliance is infeasible or would be an unreasonable hardship. The City demonstrated its commitment to this public interest by enacting Ordinance 187-12 in September 2012, which added Chapter 38 to the Administrative Code. Chapter 38 requires that before a building owner leases space to a small business for use as a public accommodation, the owner must either (1) ensure that existing public restrooms, ground floor entrances, and ground floor exits are accessible, if accessibility is required and readily achievable, or (2) provide written notice to the prospective tenant that the property may not currently meet all construction-related accessibility standards. The mandate of Chapter 11D furthers the City's objectives.

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