

Amendment of the Whole, Bearing a New Title
In Committee - 7/23/12

FILE NO. 111047

ORDINANCE NO.

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

3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 38,**
4 **Sections 38.1 through 38.67, and amending San Francisco Campaign and**
5 **Governmental Conduct Code Section 3.400, all to require commercial landlords leasing**
6 **properties to small businesses for use as public accommodations to: 1) bring**
7 **public restrooms, ground floor entrances to, and exits from, the building into**
8 **compliance with applicable state and federal disability access laws or to disclose to**
9 **tenants that the property may not currently meet all applicable construction-related**
10 **accessibility standards, including standards for public restrooms and ground floor**
11 **entrances and exits any noncompliance; 2) inform small business tenants of potential**
12 **that they may be legally and financially liabilities for failureing to comply with those**
13 **laws and offer such tenants copies of the Small Business Commission's access**
14 **information notice; 3) include in any new or amended leases a provision addressing**
15 **the respective obligations of the landlord and small business tenant to bring the leased**
16 **premises into compliance with those access laws; (4) requiring the Small Business**
17 **Commission, by January 1, 2013, to develop and distribute an access information**
18 **notice in multiple languages regarding local, state, and federal disability access laws**
19 **that may apply to businesses in San Francisco and to make that notice available for**
20 **distribution through various other City departments; and 4)5) to require the City to give**
21 **priority to building permit applications for work to bring space leased to used by small**
22 **businesses tenants into compliance with those access laws; and making**
23 **environmental findings.**

24 NOTE: Additions are *single-underline italics Times New Roman*;
25 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.

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

11
12 **SEC 38.2. DEFINITIONS.**

13 For purposes of this Chapter 38:

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

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

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

23 ~~(e)~~(d) “Public Accommodation Facility” shall mean property of 7,500 square feet of space or
24 less leased by a Small Business Tenant to be used as a Public Accommodation.

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

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

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

8
9 **SEC. 38.3. DISABILITY ACCESS IMPROVEMENTS; NOTICE OF DISABILITY ACCESS**
10 **OBLIGATIONS.**

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

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

19 (2) Provide written notice to any prospective Small Business Tenant that the property
20 may not currently meet all applicable construction-related accessibility standards, including
21 standards for public restrooms and ground floor entrances and exits. the public restrooms
22 and/or ground floor entrances and exits currently do not meet the disability access standards
23 of Title 28, Sections 36.304 and 36.305, of the Code of Federal Regulations.

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

4 **DISABILITY ACCESS OBLIGATIONS UNDER**
5 **SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38**

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

9 **You May Be Held Liable for Disability Access Violations on the Property.** Even though you
10 are not the owner of the Property, you, as the tenant, as well as the Property owner, may still be
11 subject to legal and financial liabilities if the leased Property does not comply with applicable Federal
12 and State disability access laws. You may wish to consult with an attorney prior to entering this lease
13 to make sure that you understand your obligations under Federal and State disability access laws. The
14 Landlord must provide you with a copy of the Small Business Commission Access Information
15 Notice under Section 38.6 of the Administrative Code in your requested language. For more
16 information about disability access laws applicable to small businesses, you may wish to visit
17 the website of the San Francisco Office of Small Business or call 415-554-6134.

18 **The Lease Must Specify Who Is Responsible for Making Any Required Disability Access**
19 **Improvements to the Property.** Under City law, the lease must include a provision in which you, the
20 Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying
21 for required disability access improvements on the leased Property. The lease must also require you
22 and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased
23 Property that might impact accessibility under federal and state disability access laws. You may wish
24 to review those provisions with your attorney prior to entering this lease to make sure that you
25 understand your obligations under the lease.

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

3 Signed: _____, Tenant

4 Signed: _____, Landlord

5
6 (c) If the Commercial Landlord does not ensure that ~~any existing public restrooms are~~
7 accessible, and also that ~~any~~ ground floor entrances, ~~and~~ ground floor exits are accessible as
8 provided in subsection (a)(1) and instead proceeds under subsection (a)(2), the Commercial Landlord
9 shall include the following statement in Disability Access Obligations Notice required under
10 subsection (b):

11 “PLEASE NOTE: The Property may not currently meet all applicable construction-
12 related accessibility standards, including standards for public restrooms and ground floor
13 entrances and exits. The public restrooms and/or ground floor entrances and exits of the
14 Property currently do not meet the disability access standards of Title 28, Sections 36.304 and
15 36.305, of the Code of Federal Regulations.”

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

19 (d) The Commercial Landlord must sign, and obtain the Small Business Tenant's signature on,
20 the Disability Access Obligations Notice under subsections (b) and (c) on or before execution or
21 amendment of the ~~Small Business Lease~~ and shall provide the tenant with a copy of the Small
22 Business Commission's Access Information Notice as defined under Section 38.6 in the
23 tenant's requested language.

24
25 **SEC. 38.4. PRIORITY PERMIT PROCESSING FOR DISABILITY ACCESS WORK.**

1 The City shall give priority under Section 3.400 of the Campaign and Governmental Conduct
2 Code to any permit application from a Commercial Landlord, or Small Business Tenant, or any small
3 business that owns and operates a Public Accommodation facility of 7,500 square feet or less of space
4 in San Francisco, for work consisting primarily of disability access improvements at ~~a that~~ Public
5 Accommodation Facility. The ~~Zoning Administrator~~ Director of the Department of Building
6 Inspection shall determine whether a permit application qualifies for priority under this Section.

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

9
10 **SEC. 38.5. LEASE PROVISIONS REGARDING OBLIGATIONS OF LANDLORDS AND**
11 **TENANTS FOR DISABILITY ACCESS IMPROVEMENTS.**

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

19
20 **SEC. 38.6. SMALL BUSINESS COMMISSION ACCESS INFORMATION NOTICE.**

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

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

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6 **SEC. 38.76. OPERATIVE DATES.**

7 *(a) Except as provided in subjection 38.76(c), the provisions of this Chapter 38 shall apply to*
8 *Small Business Leases of property of 7,500 to 5,001 square feet of space, and to the parties to those*
9 *leases, entered into, or amended, on or after January 1, 2013.*

10 *(b) Except as provided in subjection 38.76(c), the provisions of this Chapter 38 shall apply to*
11 *Small Business Leases of property of 5,000 square feet of space or less, and to the parties to those*
12 *leases, entered into, or amended, on or after June 1, 2013.*

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

14
15 Section 3. The San Francisco Campaign and Governmental Conduct Code is hereby
16 amended by amending Section 3.400 to read as follows:

17 **SEC. 3.400. PERMIT APPLICATION PROCESSING.**

18 (a) EQUAL TREATMENT OF PERMIT APPLICANTS. It shall be the policy of the
19 Department of Building Inspection, the Planning Department, the Department of Public Works
20 and the officers and employees of such departments to treat all permit applicants the same
21 regardless of the relationship of the applicant and/or the applicant's representatives to any
22 officer or employee of the City and County and regardless of whether the applicant hires a
23 permit consultant to provide permit consulting services. Intentional preferential treatment of
24 any permit applicant and/or the applicant's representatives by any officer or employee of the
25

1 Department of Building Inspection, the Planning Department, or the Department of Public
2 Works shall subject the officer or employee to disciplinary action for official misconduct.

3 (b) APPLICATION PRIORITY. It shall be the policy of the Department of Building
4 Inspection, the Planning Department, the Department of Public Works and the officers and
5 employees of such departments to review, consider, and process all applications, revisions,
6 corrections and other permit-related material in the order in which that type of material is
7 received unless there is a written finding of a public policy basis for not doing so, such as the
8 involvement of public funds in the project for which the permit is sought, or the response to a
9 delay caused by an earlier procedural error in processing the permit or another permit for the
10 same project. Absent such a finding, any officer or employee of the Department of Building
11 Inspection, the Planning Department, the or Department of Public Works who intentionally
12 fails to review, consider and process all applications, revisions, corrections and other permit-
13 related material in the order in which that type of material is received shall be subject to
14 disciplinary action for official misconduct. The Department of Building Inspection, the
15 Planning Department, and the Department of Public Works shall each adopt written guidelines
16 for determining when there is a public policy basis for processing permit material out of order.
17 For purposes of this section, and any corresponding written guidelines, expediting of work consisting
18 primarily of disability access improvements for real property shall qualify as a public policy basis for
19 processing permit material out of order, on a priority basis.

20 (c) PERMIT PROCESSING CODE OF CONDUCT. No later than 60 days after the
21 effective date of this Article, the Ethics Commission shall adopt a code of conduct for permit
22 processing (the "Permit Processing Code of Conduct") containing ethical guidelines for permit
23 applicants, permit consultants, and officers and employees of the Department of Building
24 Inspection, the Planning Department, the and Department of Public Works. The Permit
25 Processing Code of Conduct shall be posted in a conspicuous place in each department, and

1 a copy shall be distributed to each officer of the City and County who makes or participates in
2 making decisions related to permit applications.

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

4
5 Section 4. General Provisions.

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

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

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

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

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

5 By: _____
6 ADINE VARAH
7 Deputy City Attorney

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