

BOARD of SUPERVISORS



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MEMORANDUM

TO: Katy Tang, Director
Small Business Commission, City Hall, Room 448

FROM: John Carroll, Assistant Clerk, Land Use and Transportation Committee

DATE: October 16, 2024

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, 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. 240982

Ordinance amending the Building, Administrative, and Public Works Codes to remove the local requirement for existing buildings with a place of public accommodation to have all primary entries and paths of travel into the building accessible to persons with disabilities or to receive a City determination of equivalent facilitation, technical infeasibility, or unreasonable hardship; and affirming the Planning Department's determination under the California Environmental Quality Act.

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.

c:
Offices of Chair Melgar and Supervisor Mandelman
Kerry Birnbach, Senior Policy Analyst/Commission Secretary

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

1 [Building, Administrative, Public Works Codes - Disability Access Improvements for Places of
2 Public Accommodation]

3 **Ordinance amending the Building, Administrative, and Public Works Codes to remove**
4 **the local requirement for existing buildings with a place of public accommodation to**
5 **have all primary entries and paths of travel into the building accessible to persons with**
6 **disabilities or to receive a City determination of equivalent facilitation, technical**
7 **infeasibility, or unreasonable hardship; and affirming the Planning Department's**
8 **determination under the California Environmental Quality Act.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
12 **Board amendment additions** are in Arial font.
13 **Board amendment deletions** are in ~~Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

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

17 Section 1. Findings.

18 (a) Pursuant to Charter Section 4.121 and Building Code Section 104A.2.11.1.1, the
19 Building Inspection Commission considered this ordinance at a duly noticed public hearing
20 held on _____, 2024.

21 (b) Chapter 11D of the Building Code currently requires the owner of an existing
22 building with a place of public accommodation to have the building inspected for compliance
23 with accessible entry and path of travel requirements. If the building is not in compliance, the
24 owner must either bring the building into compliance or obtain a finding from the City of
25 equivalent facilitation, technical infeasibility, or unreasonable hardship. All mandated work
must be completed within the time periods specified in the Building Code for building permits
unless an extension of time is granted.

1 (c) Property owners are responsible for compliance with Code requirements, but
2 leases may shift some or all of the burden of compliance onto tenants. Many of the buildings
3 subject to the Chapter 11D requirements have multiple leased spaces, many of which are
4 operated by small businesses without substantial financial resources.

5 (d) The requirements of Chapter 11D were designed to bring a broader set of property
6 and business owners into compliance with the accessibility standards of the California
7 Building Code and, to the greatest extent feasible, the federal Americans with Disabilities Act.
8 As a result, as of October 2024, over 16,500 businesses in San Francisco are compliant with
9 program accessibility requirements (including waived and exempted businesses) and another
10 1,190 businesses have applied for a permit to bring the properties into compliance with
11 Chapter 11D. With a compliance rate of 75% of businesses, the City intends to pivot its focus
12 and limited resources to facilitate compliance with State and Federal accessibility standards
13 by providing financial support and robust education and outreach.

14 (e) No local findings are required for this ordinance under California Health and Safety
15 Code Section 17958.7 because the amendments to the Building Code contained in this
16 ordinance do not regulate materials or manner of construction or repair, and instead relate in
17 their entirety to administrative procedures for implementing the code, which are expressly
18 excluded from the definition of a “building standard” by California Health and Safety Code
19 Section 18909(c).

20 (f) The Planning Department has determined that the actions contemplated in this
21 ordinance comply with the California Environmental Quality Act (California Public Resources
22 Code Sections 21000 *et seq.*). Said determination is on file with the Clerk of the Board of
23 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
24 determination.

1 Section 2. Chapters 1A and 11D of the Building Code are hereby amended by (1)
2 revising Sections 105A.3 (Section 105A.3.3 specifically), 1101D, and 1102D; (2) deleting
3 existing Section 1103D and adding new Section 1103D; (3) deleting existing Sections 1104D,
4 1105D, 1106D, 1107D, 1108D, 1109D, 1110D, and 1111D; and (4) renumbering existing
5 Sections 1112D, 1113D, and 1114D as new Sections 1104D, 1105D, and 1106D respectively,
6 and revising said Sections, to read as follows:
7

8 **105A.3 Access Appeals Commission.**

9 **105A.3.1 Establishment; composition; purpose.** Pursuant to the provisions of
10 Section 19957.5 of the Health and Safety Code of the State of California, there is hereby
11 established an Appeals Board to be known as the Access Appeals Commission composed of
12 five members to hear written appeals brought by any person regarding action taken by the
13 Department in the enforcement of the requirements of Part 5.5 (commencing with Section
14 19955), Division 13 of the Health and Safety Code of the State of California, including the
15 exceptions contained in Section 19957 thereof, as well as action taken by the Department in
16 the enforcement of the disabled access and adaptability provisions of this code.

17 * * * *

18 **105A.3.3 Powers and duties; finality.** The Access Appeals Commission shall conduct
19 hearings on written appeals made under Section 105A.3.4 hereof. In hearing such appeals,
20 the Access Appeals Commission may approve or disapprove the Department's interpretations
21 of Part 5.5, Division 13 of the Health and Safety Code of the State of California and of the
22 disability access and adaptability requirements of this code and actions taken by the
23 Department to enforce said requirements and abate violations. The Commission shall also
24 make determinations on equivalent facilitation, technical infeasibility, unreasonable hardship,
25 and extensions of time. ~~and such other matters as Chapter 11D—Mandatory Accessibility~~

1 ~~Improvements for Buildings with a Place of Public Accommodation may require or authorize.~~ All such
2 approvals or disapprovals shall be final and conclusive as to the Department, in the absence
3 of fraud or prejudicial abuse of discretion. See Section 110A, Table 1A-K – Penalties,
4 Hearings, Code Enforcement Assessments – for applicable fee.

5 * * * *

6 Chapter 11D

7 MANDATORY ACCESSIBILITY IMPROVEMENTS FOR BUILDINGS WITH A PLACE 8 OF PUBLIC ACCOMMODATION

9 SECTION 1101D – SCOPE

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

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

14 A building constructed under the Building Code in effect on or after January 1, 2002 is
15 presumed to be accessible to persons with disabilities and will be exempt from this Chapter
16 11D ~~upon receipt by the Department of a written notice of exemption from the Owner or the Owner's~~
17 ~~authorized agent that provides a construction permit application number dated on or after January 1,~~
18 ~~2002 and contact information for the Owner and/or Owner's authorized agent.~~

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

1 **1101D.2. Contractual Obligations.** Nothing in this Chapter 11D is intended to
2 interfere with any contractual obligations between the Owner of a building within the scope of
3 this Chapter and any lessee of space within the building.

4
5 **SECTION 1102D – DEFINITIONS**

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

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

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

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

13 ~~“California Historical Building Code.” Part 8 of Title 24, California Code of Regulations.~~

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

17 ~~“Checklist for Alterations to Commercial Store front for Accessibility.” A Checklist developed~~
18 ~~by or with the input of City departments or agencies with review authority over the subject buildings.~~

19 “Department.” The Department of Building Inspection.

20 ~~“Design Professional.” A “Registered Design Professional” as defined in Chapter 2 of the~~
21 ~~Building Code.~~

22 “Disability Access Compliance Unit” or “Compliance Unit.” The Unit within the
23 Department established under Section 110412D of this Chapter.

24 ~~“Equivalent Facilitation.” As defined in Chapter 2 of the Building Code.~~

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

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

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

8 “Place of Public Accommodation.” As defined in Chapter 2 of the Building Code and 42
9 USC Section 12181(7) of the Americans with Disabilities Act of 1990, as amended from time
10 to time.

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

14 ~~“Technically Infeasible.” As defined in Chapter 2 of the Building Code.~~

15 ~~“Technical Infeasibility.” A Code requirement is Technically Infeasible.~~

16 ~~“Unreasonable Hardship.” As defined in Chapter 2 of the Building Code. If the Building~~
17 ~~Official, or the Access Appeals Commission in any unreasonable hardship determination made under~~
18 ~~Section 1105D, determines that any of the factors that the Building Code requires to be considered in~~
19 ~~evaluating an Unreasonable Hardship request are not applicable because the required scope of work is~~
20 ~~limited to the disability access improvements mandated by this Chapter 11D, the Building Official or~~
21 ~~Access Appeals Commission may supplement the criteria by considering any applicable factor for~~
22 ~~determining what is an Undue Hardship or is Readily Achievable in Title III of the Americans with~~
23 ~~Disabilities Act (42 USC Sections 12181–12189) and its implementing regulations.~~

24 **~~SECTION 1103D—COMPLIANCE CATEGORIES~~**

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

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

9 ~~(a) A building or portion thereof was constructed or altered under a permit application filed~~
10 ~~prior to July 1, 1992 and all Primary Entries and Accessible Entrance Routes are in compliance with~~
11 ~~the requirements of the 1998 California Building Code.~~

12 ~~(b) A building or portion thereof was constructed or altered under a permit application filed~~
13 ~~on or after July 1, 1992, and prior to January 1, 2002, all Primary Entries and Accessible Entrance~~
14 ~~Routes are in compliance with the requirements of the 1998 California Building Code or a later~~
15 ~~Building Code in effect at the time of any permit application for a tenant improvement or other~~
16 ~~alteration, and the Department gave final approval of the accessible entry work under the construction~~
17 ~~permit or any alteration permits.~~

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

23 ~~(d) A building is within the scope of Chapter 4D of the Existing Building Code, which~~
24 ~~mandates earthquake retrofit of certain existing Wood-Frame Buildings, and the Owner elected~~
25

1 ~~pursuant to Section 1107D to comply with the requirements of this Chapter prior to the compliance~~
2 ~~deadlines in Table 1107D.~~

3 ~~(e) A building or portion thereof was altered, or is proposed to be altered, under a permit~~
4 ~~application filed on or after the effective date of this Chapter 11D and the Owner elected pursuant to~~
5 ~~Section 1107D to comply with the requirements of this Chapter prior to the compliance deadlines in~~
6 ~~Table 1107D.~~

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

10 ~~(a) A building or portion thereof was constructed or altered under a permit application filed~~
11 ~~prior to July 1, 1992, the building has a Primary Entry or Entries with no steps, and one or more~~
12 ~~elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance~~
13 ~~with the requirements of the 1998 California Building Code.~~

14 ~~(b) A building or portion thereof was constructed or altered on or after July 1, 1992 and prior~~
15 ~~to January 1, 2002, the building has a Primary Entry or Entries with no steps, and one or more~~
16 ~~elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance~~
17 ~~with the requirements of the 1998 California Building Code or a later Building Code in effect at the~~
18 ~~time of any permit application for a tenant improvement or other alteration, or the Department did not~~
19 ~~give final approval of the accessible entry work under the construction permit or any alteration permit.~~

20 ~~(c) A building is eligible to use the California Historical Building Code, a permit application~~
21 ~~was filed on or after January 1, 1995, the Primary Entry or Entries has no steps, and one or more~~
22 ~~elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance~~
23 ~~with the California Historical Building Code in effect at the time of permit application, or the~~
24 ~~Department did not give final approval of the accessible entry work under a construction permit or any~~
25 ~~alteration permit.~~

1 ~~**Category Three:** There is one step to the Primary Entry or Entries and one or more elements of~~
2 ~~the Primary Entry or Entries or the Accessible Entrance Route(s) do not comply with Code~~
3 ~~requirements. A building qualifies under Category Three if the building or portion thereof was~~
4 ~~constructed or altered under a permit application filed prior to July 1, 1992, the Department gave final~~
5 ~~approval of the work under the permit, the building has a Primary Entry or Entries with one step and~~
6 ~~one or more elements of the Primary Entry or Entries or the Accessible Entrance Route(s) are not in~~
7 ~~compliance with the requirements of the 1998 California Building Code.~~

8 ~~**Category Four:** The building has a Primary Entry or Entries with more than one step and one~~
9 ~~or more elements of the Primary Entry or Entries and/or the Accessible Entrance Route(s) do not~~
10 ~~comply with minimum Code requirements. A building qualifies under Category Four if the building or~~
11 ~~portion thereof was constructed or altered under a permit application filed prior to July 1, 1992, the~~
12 ~~building has a Primary Entry or Entries with more than one step, and one or more elements of the~~
13 ~~Primary Entry or Entries or the Accessible Entrance Route(s) are not in compliance with the~~
14 ~~requirements of the 1998 California Building Code, or the Department did not give final approval of~~
15 ~~the accessible entry work under the construction permit.~~

16 **SECTION 1103D – DEPARTMENT COORDINATION**

17 The Department shall coordinate with the Planning Department, the Department of Public
18 Works, Mayor’s Office on Disability, and other appropriate City departments and offices to do the
19 following:

20 (a) Provide information to project applicants who own or operate a Place of Public
21 Accommodation regarding the obligations of property owners, managers, and business tenants
22 regarding compliance with disability access requirements under the California Building Code and the
23 Americans with Disabilities Act, upon submittal of a project application; and

1 (b) Develop and distribute outreach tools, such as brochures and technical information sheets,
2 to assist project applicants who own or operate a Place of Public Accommodation in understanding
3 said requirements.

4
5 ~~**SECTION 1104D—INSPECTION AND SUBMISSION OF PRIMARY ENTRY**~~
6 ~~**COMPLIANCE CHECKLIST**~~

7 ~~**1104D.1. Category One Buildings.** The Owner of a building classified in Section 1103D as~~
8 ~~Category One shall obtain an inspection of the elements on the Department’s Category One Primary~~
9 ~~Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section~~
10 ~~1107D, the Owner shall submit to the Department’s Disability Access Compliance Unit a copy of the~~
11 ~~Checklist completed and signed by the person who performed the inspection and including his or her~~
12 ~~business contact information and a professional stamp, CASp number, or California State License~~
13 ~~Bureau contractor’s license number, whichever is applicable.~~

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

21 ~~**Exception:** For Category One subcategories (d) and (e), the Building Official may waive the~~
22 ~~requirement for an inspection and submittal of the Checklist if the Building Official determines that an~~
23 ~~inspection or documents submitted under other permit applications are the equivalent of the inspection~~
24 ~~and Checklist submittal requirements of this Chapter 11D.~~

1 ~~1104D.2. Category Two Buildings. The Owner of a building classified in Section 1103D as~~
2 ~~Category Two shall obtain an inspection of the elements on the Department's Category Two Primary~~
3 ~~Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section~~
4 ~~1107D, the Owner shall submit to the Department's Disability Access Compliance Unit a copy of the~~
5 ~~Checklist completed and signed by the person who performed the inspection and including his or her~~
6 ~~business contact information and a professional stamp or CASp number.~~

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

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

14 ~~(1) Plans showing how the non-complying element or elements will be brought into full~~
15 ~~compliance with the applicable standards for accessible entries set forth in either the California~~
16 ~~Building Code or the California Historical Building Code, and~~

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

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

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

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

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

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

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

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 ~~(d) **Option 4.** The Owner shall submit to the Disability Access Compliance Unit a statement of~~
14 ~~intent to request a hearing by the Access Appeals Commission to review the matter pursuant to Section~~
15 ~~1110D and Section 105A.3.3 of this Code.~~

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

19 ~~**1104D.3. Category Three Buildings.** The Owner of a building classified in Section 1103D as~~
20 ~~Category Three shall obtain an inspection of the elements on the Department's Category Three~~
21 ~~Primary Entry Compliance Checklist by an Inspector (as defined in Section 1102D). On or before the~~
22 ~~time for compliance specified in Section 1107D, the Owner shall submit to the Department's Disability~~
23 ~~Access Compliance Unit a copy of the Checklist completed and signed by the person who performed the~~
24 ~~inspection and including his or her business contact information and a professional stamp or CASp~~
25 ~~number.~~

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

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

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

17
18 ~~**SECTION 1105D—EQUIVALENT FACILITATION; TECHNICAL INFEASIBILITY, OR**~~
19 ~~**UNREASONABLE HARDSHIP**~~

20 ~~**1105D.1. Equivalent Facilitation.** The Department shall develop an Approved Barrier Removal~~
21 ~~Standard in consultation with the Access Appeals Commission, the Planning Department, and the~~
22 ~~Department of Public Works. The Disability Access Compliance Unit shall maintain the Approved~~
23 ~~Barrier Removal Standard and review any proposal for Equivalent Facilitation under this Chapter 11D~~
24 ~~for compliance with that Standard. Any proposal for Equivalent Facilitation that does not comply with~~
25 ~~the Approved Barrier Removal Standard must be approved by the Access Appeals Commission.~~

1 ~~**1105D.2. Technically Infeasible.** A request for a finding that compliance is Technically~~
2 ~~Infeasible can be based upon either a structural or a non-structural condition.~~

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

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

14 ~~**1105D.2.1. Acceptance of previously granted determinations of Technical Infeasibility.** Under~~
15 ~~the California Building Code, all findings of Technical Infeasibility must be documented by the~~
16 ~~Department and can only be made on a case-by-case basis. The Department will accept and record a~~
17 ~~previously approved finding of Technical Infeasibility for a building within the scope of this Chapter~~
18 ~~11D if: (1) the finding of Technical Infeasibility was approved by the Department and can be~~
19 ~~documented, (2) the finding of Technical Infeasibility is applicable to the elements covered by this~~
20 ~~Chapter 11D, and (3) an Inspector has submitted written documentation acceptable to the Department~~
21 ~~that all conditions and requirements of the Technical Infeasibility are unchanged and remain~~
22 ~~applicable.~~

23 ~~**1105D.3. Unreasonable Hardship.** The Compliance Unit, in consultation with the Access~~
24 ~~Appeals Commission, shall develop and publish guidelines specifying the conditions under which an~~
25 ~~Unreasonable Hardship would be approved by the Department. All Unreasonable Hardships must be~~

1 *ratified by the Access Appeals Commission pursuant to Section 11B-202.4, Exception 8, and Section*
2 *1.9.1.5 of the California Building Code.*

3
4 **~~SECTION 1106D—BUILDING PERMIT REQUIRED; INSPECTION AND~~**
5 **~~COMPLETION OF WORK; VALUATION APPLIED TO FUTURE PROJECTS; NOTICE TO~~**
6 **~~TENANT(S)~~**

7 **~~1106D.1. Building Permit Required.~~** *A building permit is required to make any and all*
8 *modifications to a building either mandated or authorized by this Chapter 11D. All work required by*
9 *this Chapter 11D shall be considered by the Department to be barrier removal and no additional path*
10 *of travel upgrade shall be required. Only those elements that are actually altered will be required to*
11 *comply with the current requirements of this Code.*

12 *If a permit is required to remediate the entryway or the sidewalk, the Owner shall provide*
13 *written notice to the business tenant or tenants of the building a minimum of 30 days prior to filing the*
14 *permit application with the Department.*

15 **~~1106D.1.1. Historic Resourcees.~~**

16 *(a) For a building considered to be a Historic Resourcee, the plans submitted with the building*
17 *permit application shall be prepared in conjunction with a Design Professional and in compliance with*
18 *the California Historical Building Code, requirements of the San Francisco Planning Department, and*
19 *guidelines developed and published by the Compliance Unit.*

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

24 **~~1106D.2. Alteration Work That May Be Included in the Permit Application.~~** *The only work*
25 *that may be included in the permit required by Section 1106D.1 is: (a) the work to a Primary Entry or*

1 ~~Accessible Entrance Route mandated by Section 1104D or (b) any voluntary disability access~~
2 ~~improvements authorized by Section 1109D.~~

3 ~~**1106D.3. Inspection of Work.** All work completed by permit under Option 1 of Section 1104D~~
4 ~~.2 for Category Two, Category Three, and Category Four buildings shall be inspected by the~~
5 ~~Department's field inspector that is assigned to that district. If the work complies with requirements of~~
6 ~~this Chapter 11D, the inspector shall issue to the Owner a Certificate of Final Completion stipulating~~
7 ~~that the work complies with the requirements and shall provide a copy of the Certificate of Final~~
8 ~~Completion to the Disability Access Compliance Unit. Upon request, the Owner may obtain a final~~
9 ~~inspection and approval by a Department inspector who is certified as a CASp Inspector; the~~
10 ~~inspection fee set forth in Table IA-D of Section 110A of this Code shall apply.~~

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

17 ~~**1106D.4. Completion of Work; Certificate of Final Completion.** Notwithstanding any other~~
18 ~~provision of this Code, all work mandated by this Chapter 11D must be completed within the time~~
19 ~~periods specified in Section 106A.4.4 of this Code for Permit Expiration unless an extension of time is~~
20 ~~granted pursuant to Section 1108D. Any Certificate issued by the Department upon final completion of~~
21 ~~the work required by this Chapter 11D shall state that compliance is with Chapter 11D of this Code~~
22 ~~and not with the requirements of either the Americans with Disability Act or the California Building~~
23 ~~Code.~~

24 ~~**1106D.5. Valuation Applied to Future Projects.** As authorized by the Building Code, the~~
25 ~~valuation of both the mandatory and the voluntary disability access improvements performed under this~~

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

SECTION 1107D—COMPLIANCE SCHEDULE; OPTION TO COMPLY WITH CURRENT CODE REQUIREMENTS

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

<i>TABLE 1107D</i>				
<i>COMPLIANCE SCHEDULE</i>				
<i>Category</i>	<i>Category Description</i>	<i>Submit compliance Checklist and specify compliance Option</i>	<i>File application for required building permit(s)</i>	<i>Obtain required building permit(s) 1</i>

1	<i>Category One Buildings</i>	<i>In compliance</i>	<i>June 30, 2022</i>	<i>N/A</i>	<i>N/A</i>
2					
3	<i>Category Two Buildings</i>	<i>No steps but barriers</i>	<i>June 30, 2022</i>	<i>December 31, 2022</i>	<i>September 29, 2023</i>
4					
5	<i>Category Three Buildings</i>	<i>One step with barriers</i>	<i>June 30, 2022</i>	<i>December 31, 2022</i>	<i>September 29, 2023</i>
6					
7	<i>Category Four Buildings</i>	<i>1+ step with other barriers</i>	<i>June 30, 2022</i>	<i>December 31, 2022</i>	<i>September 29, 2023</i>
8					

9

10 *1. Pursuant to Section 1106D.4, all mandated work must be completed within the time periods*
 11 *specified in Section 106A.4.4 of this Code for Permit Expiration unless an extension of time of time is*
 12 *granted pursuant to Section 1108D*

13

14 ***SECTION 1108D — EXTENSIONS OF TIME***

15 *(a) For good cause shown, the Building Official may grant one extension of time for up to six*
 16 *months from the compliance timelines in Table 1107D. For good cause shown, one or more additional*
 17 *extensions of time may be granted by the Access Appeals Commission pursuant to Section 1110D;*
 18 *provided, however, that in no event shall the Commission extend the time to complete the mandatory*
 19 *work required by this Chapter 11D beyond June 30, 2026. The Commission's decision shall be final.*

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

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

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

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

3 ~~(3) Financial hardship;~~

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

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

6
7 **~~SECTION 1109D—VOLUNTARY DISABILITY ACCESS IMPROVEMENTS~~**

8 ~~—In addition to the mandatory requirements of this Chapter 11D, the Owner may elect to make~~
9 ~~additional corrections to the building or a portion thereof to comply with other State or Federal~~
10 ~~disability access requirements.~~

11
12 **~~SECTION 1110D—APPEAL PROCEDURE~~**

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

16
17 **~~SECTION 1111D—ENFORCEMENT~~**

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

22
23 **SECTION 11042D – DISABILITY ACCESS COMPLIANCE UNIT**

24 The Building Official shall establish within the Department a Disability Access
25 Compliance Unit to enforce this Chapter 11D and to perform such other duties as the Building

1 Official shall require. The Unit shall have at least one CASp Inspector from the Department
2 and such other departmental employees as the Building Official deems appropriate. The
3 *Compliance* Unit shall consult and coordinate with other City agencies with review authority
4 over the permits necessary to comply with the requirements of this Chapter, including but not
5 limited to the Planning Department and Department of Public Works, and any other City
6 agencies that the Building Official determines are necessary or desirable to achieve the
7 purposes of this Chapter.

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

15
16 **SECTION 110513D – ~~COORDINATION WITH OTHER CITY AGENCIES; REPORTS~~**
17 **TO THE MAYOR'S OFFICE ON DISABILITY AND THE BOARD OF SUPERVISORS**

18 *1113D.1. Coordination with Other Agencies. The Department shall coordinate with the*
19 *Planning Department, the Department of Public Works, and other City departments with review*
20 *authority over the accessibility improvements mandated or authorized by this Chapter 11D, as well as*
21 *with the Office of Small Business, the Mayor's Office on Disability, and other appropriate City*
22 *agencies, to develop and implement (1) outreach tools, (2) pre-screening procedures, (3) methods to*
23 *streamline the process, (4) proposed Code revisions, and (5) administrative bulletins, brochures,*
24 *checklists, and guidelines or other documents to implement the purpose and objectives of this Chapter.*
25 *The Checklist for Alterations to Commercial Storefront for Accessibility in existence on the effective*

1 *date of this Chapter 11D, as amended from time to time, and other guidance documents shall be used to*
2 *review and approve the disability access improvements mandated or authorized by this Chapter 11D.*

3 ***1113D.2.** After consultation and coordination with other appropriate City departments and*
4 *agencies, on or before January 31, 2024, the Department shall submit a report in writing to the Board*
5 *of Supervisors concerning the effectiveness of this Chapter 11D and including recommendations, if any,*
6 *for amendments to this Chapter. A progress report shall be submitted to the Board of Supervisors once*
7 *a year thereafter until completion of this Chapter's disability access improvement program. Within six*
8 *months of the effective date of Board of Supervisors Ordinance No. _____, the Department shall report*
9 *to the Mayor's Office on Disability, or any successor department or office, regarding its progress in*
10 *directing resources to strengthen disability access reviews and inspections of small businesses serving*
11 *the public. Within twelve months of the effective date of said ordinance, the Department shall report to*
12 *the Board of Supervisors regarding its efforts to strengthen disability access reviews and inspections of*
13 *small businesses serving the public, including any successes related to these efforts. Within twelve*
14 *months of the effective date of said ordinance, the Office of Small Business and the Mayor's Office on*
15 *Disability, or any successor department or office, shall report to the Board of Supervisors regarding*
16 *their efforts to further advance accessibility for all persons with disabilities in partnership with local*
17 *businesses.*

18
19 **SECTION 110614D – NOTICE**

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

1
2 Section 3. Chapter 38 of the Administrative Code is hereby amended by revising
3 Sections 38.1 and 38.3, to read as follows:
4

5 **CHAPTER 38:**

6 **COMMERCIAL LANDLORDS; ACCESS IMPROVEMENT OBLIGATIONS AND**
7 **NOTICE TO SMALL BUSINESS TENANTS REGARDING DISABILITY ACCESS**

8 **SEC. 38.1. FINDINGS.**

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

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

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

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

21 (4) This Chapter 38 is intended to ensure that: (i) ~~public restrooms and ground floor~~
22 ~~entrances to and exits from real property leased to Small Business Tenants comply with applicable~~
23 ~~disability access requirements and that~~ Commercial Landlords disclose any noncompliance with
24 ~~such requirements applicable construction-related accessibility standards, including but not limited to~~
25 standards for public restrooms, service counters, accessible seating, and ground floor entrances and

1 exits, before a Small Business Tenant enters into or renews a lease for the property; (ii)
2 Commercial Landlords and Small Business Tenants receive priority permit processing for
3 work consisting primarily of disability access improvements; and (iii) every new and amended
4 commercial lease between a Commercial Landlord and a Small Business Tenant for premises
5 that will be used as a Place of Public Accommodation clearly and expressly addresses the
6 respective obligations of the parties regarding disability access improvements. This Chapter is
7 further intended to help encourage and facilitate disability access improvements by
8 Commercial Landlords and Small Business Tenants.

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

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

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

18 (2) Provide written notice to any prospective Small Business Tenant that the
19 property may not currently meet all applicable construction-related accessibility standards,
20 including standards for public restrooms, service counters, seating, and ground floor entrances
21 and exits.

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

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Section 4. The Public Works Code is hereby amended by revising Section 723.2, to read as follows:

SEC. 723.2. MINOR ENCROACHMENTS.

(a) **Minor Encroachments.** The Director of ~~of~~¹ the Department of Public Works (“Department”) may grant permission, revocable at the Director’s will~~with~~¹ in accordance with subsection (f), to an owner of property abutting any court, alley, or street to install and maintain minor encroachments such as fences, retaining walls, steps or stairways, sidewalk (pipe) barriers to control illegal vehicular parking or driving in sidewalk and public right-of-way areas, and other minor structures in the sidewalk fronting such property where such encroachments are desirable or convenient in conjunction with the owner’s use and enjoyment of the property, or required for the safety, convenience, and comfort of the public using the sidewalk. Pipelines or other portions of an alternate water source system constructed within the public right-of-way for the purposes set forth in Article 12C of the Health Code and in accordance with Health Code Section 12C.6 are minor encroachments subject to the requirements of this Section 723.2. Tier 1 Projects and Tier 2 Projects, as defined in Section 723.1(a), are minor encroachments subject to the requirements of Section 723.2.

* * * *

(n) Unless otherwise provided in the^{eis} Section 723.2, the Department shall collect a public right-of-way occupancy assessment fee for the use of the sidewalk or other public right-of-way space permitted under the provisions of this Section 723.2.

(1) In accordance with this subsection (n), the public right-of-way occupancy assessment fee for minor encroachments, whether permitted or unpermitted and as specified in subsection (n)(2), shall be an annual fee of \$3 per square foot of occupancy of the sidewalk

1 or other public right-of-way space. For purposes of calculating the assessment fee, the
2 Department shall charge no less than \$100 per year even though the calculated square
3 footage charge for the encroachment may result in a smaller assessment fee.

4 (2) The following categories of minor encroachments are subject to the public
5 right-of-way occupancy assessment fee:

6 (A) Encroachments in, on, above, or below the public right-of-way that
7 are affixed or appurtenant to any building whose owner obtained a site permit for new
8 construction on or after August 29, 2005. This subsection (n)(2)(A) also shall apply to any
9 commercial, industrial, or mixed-use building whose owner obtained a site permit for new
10 construction prior to August 29, 2005; provided, however, that such building is not located in
11 any Neighborhood Commercial District as designated in Planning Code Article 7 and that the
12 encroachment associated with such building was installed or encroachment permit obtained
13 prior to August 29, 2005. This subsection (n)(2)(A) shall specifically include, but not be limited
14 to, doors that open over the public right-of-way and subsidewalk basements; provided,
15 however, that this subsection shall exclude encroachments for shoring and tiebacks. This
16 subsection (n)(2)(A) shall not apply to a building that has been converted from a commercial,
17 industrial, or mixed-use building into a building containing only residential use.

18 ~~(B) Encroachments associated with a commercial, industrial, or mixed-use~~
19 ~~building that change the vertical or horizontal plane of an existing sidewalk and modify the existing~~
20 ~~sidewalk slope pattern in order to provide access necessary to comply with the Americans with~~
21 ~~Disabilities Act; provided, however, that the building obtained a site permit for new construction on or~~
22 ~~after August 29, 2005.~~

23 (BE) Any enclosure of the public right-of-way that is used exclusively for
24 private benefit and was installed on or after August 29, 2005. This subsection (n)(2)(BE) also
25 shall apply to any enclosure installed prior to August 29, 2005 that is associated with a

1 commercial, industrial, or mixed-use building; provided, however, that the building is not
2 located in any Neighborhood Commercial District as designated in Planning Code Article 7.

3 (CD) Underground storage tanks.

4 * * * *

5 (13) Notwithstanding subsection (n) of this Section 723.2, no public right-of-way
6 occupancy assessment fee shall be charged for any encroachment that is appurtenant to any building
7 and that is constructed exclusively for compliance with any applicable accessibility standard, including
8 but not limited to any requirement of the Americans with Disabilities Act.

9 * * * *

10
11 Section 5. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor’s veto of the ordinance.

15
16 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the “Note” that appears under
21 the official title of the ordinance.

1 APPROVED AS TO FORM:
2 DAVID CHIU, City Attorney

3 By: /s/ Peter Miljanich
4 PETER MILJANICH
Deputy City Attorney

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LEGISLATIVE DIGEST

[Building, Administrative, Public Works Codes - Disability Access Improvements for Places of Public Accommodation]

Ordinance amending the Building, Administrative, and Public Works Codes to remove the local requirement for existing buildings with a place of public accommodation to have all primary entries and paths of travel into the building accessible to persons with disabilities or to receive a City determination of equivalent facilitation, technical infeasibility, or unreasonable hardship; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

Chapter 11D of the Building Code requires the owner of an existing building with a place of public accommodation to have the building inspected for compliance with accessible entry and path of travel requirements. If the building is not in compliance, the owner must either bring the building into compliance or obtain a finding from the City of equivalent facilitation, technical infeasibility, or unreasonable hardship. All mandated work must be completed within the time periods specified in the Building Code for building permits, unless an extension of time is granted.

Chapter 38 of the Administrative Code requires commercial landlords, before entering into or amending a lease agreement with a small business tenant for use of a place of public accommodation, to either remove barriers to disabled access, or notify prospective tenants in writing of applicable disability access requirements, including Building Code Chapter 11D.

Public Works Code Section 723.2 sets forth the process by which the Director of the Department of Public Works may permit private property owners to install or maintain minor encroachments in the public right-of-way. Section 723.2 requires the Public Works Department to collect a public right-of-way occupancy assessment fee for use of the sidewalk or other public right-of-way space.

Amendments to Current Law

This ordinance would remove Building Code Chapter 11D's local requirement that owners of buildings with a place of public accommodation comply with accessible entry and path of travel requirements. This ordinance would not affect the application of state or Federal requirements for building accessibility to buildings in San Francisco. Instead, this ordinance would require the Department of Building Inspection to (1) provide information to project applicants who own or operate a place of public accommodation regarding obligations to comply with disability access requirements under the California Building Code and the Americans with Disabilities Act; and (2) develop and distribute outreach tools, such as brochures and technical information sheets, to assist project applicants who own or operate a

FILE NO. 240982

place of public accommodation in understanding these requirements. This ordinance would also make conforming amendments to Chapter 38 of the Administrative Code.

This ordinance would eliminate public right-of-way occupancy assessment fees for certain encroachments constructed exclusively for compliance with any applicable accessibility standard, including but not limited to any requirement of the Americans with Disabilities Act.

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MAYOR'S OFFICE ON DISABILITY AND OFFICE OF SMALL BUSINESS CONCEPT PAPER: PARTNERSHIP TO DRIVE ACCESSIBILITY AND INCLUSIVITY BEST PRACTICES IN LOCAL BUSINESSES

October 2024

Introduction

San Francisco has a unique approach to making sure that the small businesses in the City are accessible to patrons with disabilities. Even though the Americans with Disabilities Act has modest requirements for public businesses that were built before 1990, San Francisco goes further and has required that people with disabilities be able to get into the front entrance. This program, the Accessible Business Entrance program (“ABE”), has been successful with 82% of affected small businesses participating. However, the ABE only addresses physical accessibility.

At this point, we recommend that the City’s overall focus be expanded to develop productive relationships between the small business community and the disability community to bring about inclusivity and accessibility in many different respects, not only for people with mobility disabilities.

City’s Primary Focus on Physical (Structural) Access and Enforcement

The ABE was codified in Chapter 11D of the Building Code in 2016 to establish a framework for a program under the Department of Building Inspection (“DBI”) to bring a broader set of property and business owners into compliance with the accessibility standards of the California Building Code and, to the greatest extent feasible, the federal Americans with Disabilities Act within proscribed timelines.

The program has been extremely successful, with 16,505 out of 23,504 businesses now compliant with Chapter 11D requirements (including waived and exempted businesses); and an additional 2,871 are on the track towards compliance after having submitted a checklist. That means that a little over 82% of businesses are or are in the process of becoming compliant with Chapter 11D requirements.

However, 4,128 (or approximately 18%) of businesses have not responded to DBI’s extensive outreach efforts to date (which include 10 rounds of letters and postcards in four

different languages, and numerous outreach events). At this point we believe that many of the remaining nonresponsive businesses are operated by small business owners who lack substantial financial resources to comply with accessibility requirements.

As a next step, the City is moving to extend Chapter 11D for a sixth time so that DBI can begin enforcement action against the remaining noncompliant businesses. Enforcement efforts will require a significant amount of time and DBI resources, and will include the following steps:

1. A Notice of Violation (NOV) will be sent
2. Inspectors will attempt to make contact regarding the NOV, including personally visiting the businesses
3. Warning letters are issued
4. Director's Hearing is scheduled
5. Director's Hearing is held
6. Order of Abatement is issued
7. Ability to Appeal Order of Abatement
8. Order of Abatement is sent to the Assessor-Recorder's Office to place a lien on the property

Recommendation for Moving beyond Enforcement to Achieve Outcomes

At this point the City is at a crossroads and must determine the best use of its limited resources to make the most impact towards accessibility.

It can continue with enforcement action against these local small businesses. However, this will overwhelm DBI's capacity and cause substantial delays to other building code enforcement (including accessibility inspections in new businesses). It will also result in the closure of hundreds if not thousands of our local neighborhood small businesses, and inevitably pit the communities against each other as has been the case in the past.

Alternatively, the City can pivot its focus and resources toward more effective strategies to strengthen outreach, education and support of our small businesses to foster accessibility, inclusivity and community partnerships.

The Office of Small Business and Mayor’s Office on Disability recommended that the enforcement provisions of the ABE program be sunset so that DBI can redirect resources towards its inspections processes to more effectively work with property owners on accessibility improvements. Specifically:

- Provide an enhanced level of training for all inspectors on accessibility so that all inspectors are identifying and correcting accessibility requirements in the field.
- Hire a dedicated Certified Access Specialist (CASP) inspector in the DBI’s Inspection’s Division to support staff and provide guidance and expertise.
- Working with the Office of Small Business, develop educational materials for permit applicants on accessibility requirements.
- Enhance DBI’s website to provide more information and guidance for accessibility complaints.

DBI will be required to report to the Mayor’s Office on Disability (“MOD”) on its progress on these four initiatives after six months, and then again to the Board of Supervisors and MOD with a review of DBI’s efforts and the outcomes after twelve (12) months (six months after the report to MOD).

Accessibility Beyond the Front Door

The ABE program was a response to a series of accessibility lawsuits that targeted small businesses in San Francisco. Small businesses complained, often in the media, that they were forced to settle the lawsuits because they couldn’t afford private legal representation. Many disability advocates have mixed feelings about the lawsuits; on the one hand they want businesses to be accessible. Yet they do not want to be regarded as potential litigants whenever they visit a small business, and they do not want small business owners to be hurt. The media has oversimplified the story into a conflict between the disability community and small businesses. In reality, people with disabilities might be small business owners themselves and most people with disabilities appreciate the vibrant neighborhoods in San Francisco with many small businesses and they appreciate the difficulties of successfully running a small business. Accessibility can be a powerful strategy that can bring additional customers into a small business and create strong customer loyalty. It does not need to be a source of strain on a small business.

The accessible business entrance program focuses on one aspect of accessibility: physical access. There are many other types of accessibility that can open up opportunities for people with many different kinds of disabilities such as vision, hearing, cognition and less

visible health conditions. Focusing instead on accessibility in this broad sense and emphasizing inclusivity for all often does not require costly building improvements and can be achieved through different modes of communication, such as large print menus, and with staff training.

Under the leadership of the Office of Small Business (“OSB”) and MOD, and with active participation from many disability organizations and individuals, the following concepts could be developed into programs:

1. Support and Training for Small Businesses

- Expanding outreach and training with community relationships
- Create an Accessibility Best Practice Guide
- Create an educational training video

2. Public Messaging and Communications

- Let’s reframe accessibility – beyond just physical accessibility and instead focus on inclusivity and accessibility for all
- Campaigns to promote:
 - Accessibility benefits everyone
 - Tips and advice to interact with persons with disabilities (PWD)
 - A guide for businesses with tips
 - Accessibility beyond physical accessibility
 - Awareness of all the different types of disabilities and accessibility needs for each of them
- A social media campaign to highlighting innovative ways some businesses have made their businesses more accessible

3. Involvement of Disability Community

- Short interviews with exemplary business owners recorded by PWD
- Train accessibility coaches with disabilities to train business owners
- Offer training led by PWD for businesses
- Survey PWD about how a business can be more user friendly when they aren’t accessible
- Customers with disabilities recognizing and recommending accessible businesses as a way to inspire other businesses to do the same.

Initiatives - Project Goals over the Next Year:

- Best Practice Guide for disability inclusion that addresses communication disabilities, web accessibility, autism spectrum, cognitive disabilities, as well as mobility disabilities. MOD will serve as the lead agency.
- Short videos that explain and illustrate disability inclusion in the context of specific types of businesses (i.e., restaurants, stores, entertainment) with spokespersons with disabilities. OSB will serve as the lead agency, with subject matter support from MOD and the disability community.
- Social media campaigns inviting people with disabilities to submit their own short videos. OSB will serve as the lead agency, with subject matter support from MOD and the disability community.
- Newsletter articles in the Small Business Newsletter based on specific best practices from the checklist and/or interviews with customers with disabilities. OSB will serve as the lead agency, with subject matter support from MOD and the disability community.
- Discuss campaigns and strategies on disability inclusion with the Mayor's Disability Council (MDC) and Small Business Commission (SBC).
- Name of the initiative and logo or sticker to show participation. OSB and MOD will partner on this.
- Executing the deliverables described above will be done by a working group coordinated by OSB.

OSB and MOD will report back to the Board of Supervisors after twelve (12) months with information on their initiatives and successes.

Partners

- OEWD
- OSB
- MOD
- ADM
- DAS
- MDC
- SBC
- Disability Organizations, including but not limited to:
 - Lighthouse for the Blind
 - Independent Living Resource Center
 - Community Living Campaign

- Business Councils and Merchant Associations
- Visit SF/Travel SF

Introduction Form

(by a Member of the Board of Supervisors or the Mayor)



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)
(Routine, non-controversial and/or commendatory matters only)
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor _____ inquires..."
- 5. City Attorney Request
- 6. Call File No. _____ from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. _____
- 9. Reactivate File No. _____
- 10. Topic submitted for Mayoral Appearance before the Board on _____

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission Youth Commission Ethics Commission
 Planning Commission Building Inspection Commission Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes No

(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)

Sponsor(s):

Mandelman

Subject:

[Building, Administrative, Public Works Codes - Disability Access Improvements for Places of Public Accommodation]

Long Title or text listed:

Ordinance amending the Building, Administrative, and Public Works Codes to remove the local requirement for existing buildings with a place of public accommodation to have all primary entries and paths of travel into the building accessible to persons with disabilities or to receive a City determination of equivalent facilitation, technical infeasibility, or unreasonable hardship; and affirming the Planning Department's determination under the California Environmental Quality Act.

Signature of Sponsoring Supervisor: