

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Tom Hui, Director, Building Inspection Commission  
Carla Johnson, Interim Director, Mayor's Office on Disability

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Transportation  
Committee, Board of Supervisors

DATE: July 14, 2015

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Tang on July 7, 2015:

**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; 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.**

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:  
William Strawn, Department of Building Inspection  
Carolyn Jayin, Department of Building Inspection  
Sonya Harris, Building Inspection Commission

1 [Building Code - Mandatory Disability Access Improvements; Administrative Fee]

2  
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; affirming the Planning Department's California Environmental**  
10 **Quality Act determination; making findings of local conditions under the California**  
11 **Health and Safety Code; and directing the Clerk of the Board of Supervisors to forward**  
12 **the legislation to the California Building Standards Commission upon final passage.**

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

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

19 Section 1. Background and General Findings.

20 (a) 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 Section 21000 et seq.). The Board of Supervisors hereby affirms this determination.  
23 Said determination is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_  
24 and is incorporated herein by reference.  
25

1 (b) Pursuant to Charter Section D3.750-5, the Building Inspection Commission  
2 considered this ordinance at a duly noticed public hearing held on \_\_\_\_\_, 2015.

3 (c) Title III of the federal Americans with Disabilities Act of 1990 (42 USC Sections  
4 12181 - 12189), known as "the ADA," requires that Places of Public Accommodation operated  
5 by private entities be accessible to persons with disabilities. The ADA requires the removal of  
6 architectural barriers in existing buildings to provide accessibility if barrier removal is readily  
7 achievable. California's construction-related disability access requirements for Places of  
8 Public Accommodation, found in Chapter 11B of the California Building Code as adopted and  
9 amended by San Francisco, do not require existing buildings to be modified to conform to  
10 current disability access requirements unless there is an application for a building permit.

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

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

1 correction and provide to the owner or tenant a schedule of completion within a reasonable  
2 timeframe.

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

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

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

21 (f) In its Annual Report to the Legislature dated January 31, 2015, the California  
22 Commission on Disability Access reported that not having an accessible entry and path of  
23 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 Route into the building that is usable  
12 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. The  
19 sidewalks are narrow, crowded, and often sloping; much of the building stock is old and often  
20 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, in  
16 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 as  
24 the accessibility element that should be given the highest priority in making disability access  
25 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 SECTION 1102D – DEFINITIONS.

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

18 "Accessible Route." An identifiable path of travel by means of which a Primary Entry may be  
19 approached, entered and exited, and which connects the Primary Entry with an exterior approach  
20 (including any adjacent sidewalks, streets and parking areas).

21 "Building Official." The Director of the Department or the Director's designee.

22 "California Construction-Related Accessibility Standards Compliance Act." Sections 55.51  
23 through 55.53 of the California Civil Code as amended from time to time.

24 "California Historical Building Code." Part 8 of Title 24, California Code of Regulations.  
25

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

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

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

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

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

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

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

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

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

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

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

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



1 “Technical Infeasibility.” A Code requirement is Technically Infeasible.

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

3 **SECTION 1103D – COMPLIANCE CATEGORIES**

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

9 **Category One: The Primary Entry or Entries and the Accessible Route(s) comply with Code**  
10 **requirements. A building qualifies under Category One 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, and all Primary Entries and Accessible Routes are in compliance with the  
13 requirements of the 1998 California Building Code.

14 (b) A building or portion thereof was constructed or altered under a permit application filed on  
15 or after July 1, 1982 and prior to January 1, 2002, all Primary Entries and Accessible Routes are in  
16 compliance with the requirements of the 1998 California Building Code or a later Building Code in  
17 effect at the time of any permit application for a tenant improvement or other alteration, and the  
18 Department gave final approval of the accessible entry work under the construction permit or any  
19 alteration permits.

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, all Primary Entries and Accessible Routes are in compliance  
22 with the California Historical Building Code in effect at the time of the permit application, and the  
23 Department gave final approval of the accessible entry work under the construction permit or any  
24 alteration permits.

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

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

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

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

20           **Category Three: There is one step to the Primary Entry or Entries and one or more elements**  
21 **of the Primary Entry or Entries or the Accessible Route(s) do not comply with Code requirements. A**  
22 **building qualifies under Category Three if the building or portion thereof was constructed or altered**  
23 **under a permit application filed prior to July 1, 1982, the Department gave final approval of the work**  
24 **under the permit, the building has a Primary Entry or Entries with one step and one or more elements**  
25

1 of the Primary Entry or Entries or the Accessible Route(s) are not in compliance with the requirements  
2 of the 1998 California Building Code.

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

11 **SECTION 1104D – INSPECTION AND SUBMISSION OF PRIMARY ENTRY COMPLIANCE**  
12 **CHECKLIST**

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

20 **If any elements on the Checklist are found by the Inspector or licensed general contractor to be**  
21 **not in compliance with the standards for accessible entries set forth in the applicable California**  
22 **Building Code or California Historical Building Code, or the Department did not give final approval of**  
23 **the accessible entry work, the noncomplying elements shall be clearly specified in detail, the building**  
24 **shall be reassigned by the Building Official to the appropriate Category, and the Owner shall comply**

1 with all requirements of that Category. The Building Official's decision is appealable to the Building  
2 Inspection Commission pursuant to Section 77.3(b) of the Administrative Code.

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

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

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

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

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

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

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

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

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

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

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

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

16           (d) Option 4. The Owner shall submit to the Disability Access Compliance Unit a statement of  
17 intent to request a hearing by the Access Appeals Commission to review the matter pursuant to Section  
18 1110D and Section 105A.3.3 of this Code.

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

22           **1104D.3. Category Three Buildings.** The Owner of a building classified in Section 1103D as  
23 Category Three shall obtain an inspection of the elements on the Department's Category Three  
24 Primary Entry Compliance Checklist by an Inspector (as defined in Section 1102D). On or before the  
25 time for compliance specified in Section 1107D, the Owner shall submit to the Department's Disability

1 Access Compliance Unit a copy of the Checklist completed and signed by the person who performed the  
2 inspection and including his or her business contact information and a professional stamp or CASp  
3 number.

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

9 **1104D.4. Category Four Buildings.** The Owner of a building classified in Section 1103D as  
10 Category Four shall obtain an inspection of the elements on the Department's Category Four Primary  
11 Entry Compliance Checklist by an Inspector. On or before the time for compliance specified in Section  
12 1107D, the Owner shall submit to the Department's Disability Access Compliance Unit a copy of the  
13 Checklist completed and signed by the person who performed the inspection and including his or her  
14 business contact information and a professional stamp or CASp number.

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

20 **SECTION 1105D – EQUIVALENT FACILITATION; TECHNICAL INFEASIBILITY, OR**  
21 **UNREASONABLE HARDSHIP.**

22 **1105D.1. Equivalent Facilitation.** The Department shall develop an Approved Barrier Removal  
23 Standard in consultation with the Access Appeals Commission, the Planning Department, and the  
24 Department of Public Works. The Disability Access Compliance Unit shall maintain the Approved  
25 Barrier Removal Standard and review any proposal for Equivalent Facilitation under this Chapter 11D

1 for compliance with that Standard. Any proposal for Equivalent Facilitation that does not comply with  
2 the Approved Barrier Removal Standard must be approved by the Access Appeals Commission.

3 **1105D.2. Technically Infeasible.** A request for a finding that compliance is Technically  
4 Infeasible can be based upon either a structural or a non-structural condition.

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

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

16 **1105D.3. Unreasonable Hardship.** In consultation with the Access Appeals Commission, the  
17 Department shall develop guidelines on what would be considered an Unreasonable Hardship under  
18 this Chapter 11D. Any proposal for a finding of Unreasonable Hardship that does not comply with the  
19 guidelines must be approved by the Access Appeals Commission.

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

22 **1106D.1. Building permit required.** A building permit is required to make any and all  
23 modifications to a building either mandated or authorized by this Chapter 11D.

1                    **1106D.1.1. Historic Resources.**

2                    (a) For a building considered to be a Historic Resource, the plans submitted with the  
3 building permit application shall be prepared in conjunction with a Design Professional who has  
4 expertise in the preparation of plans and specifications for preservation projects.

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

9                    **1106D.2. Alteration work that may be included in the permit application. The only work that**  
10 may be included in the permit required by Section 1106D.1 is: (a) the work to a Primary Entry or  
11 Accessible Route mandated by Section 1104D or (b) any voluntary disability access improvements  
12 authorized by Section 1109D.

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

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



1           1106D.4. Completion of work. Notwithstanding any other provision of this Code, all work  
2 mandated by this Chapter 11D must be completed within 18 months of the date an application for a  
3 building permit is required to be filed unless an extension of time is granted pursuant to Section 1108D.

4           1106D.5. Valuation applied to future projects. As authorized by the Building Code, the  
5 valuation of both the mandatory and the voluntary disability access improvements performed under this  
6 Chapter 11D may be used to comply with path of travel upgrade requirements in Building Code Section  
7 11B-202.4 Exception #8 of this Code for any future project within the same building or portion of a  
8 building for a period of time not to exceed four years from the completion date of the work; provided,  
9 however, that only the valuation of the work described in 1106D.2 (a) or (b) shall be allowed for this  
10 purpose. In order to use the valuation of voluntary disability improvements for this purpose, the Owner  
11 must follow the recommended order of priority for making accessibility improvements set forth in  
12 Section 11B-202.4 of this Code.

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

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

**TABLE 1107D**  
**COMPLIANCE SCHEDULE<sup>1</sup>**

	<b><u>Submit compliance Checklist and specify compliance Option</u></b>	<b><u>File application for required building permit(s)</u></b>	<b><u>Obtain required building permit(s)<sup>2</sup></u></b>
<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>18</u>
<u>Category Three Buildings</u>	<u>24</u>	<u>27</u>	<u>30</u>
<u>Category Four Buildings</u>	<u>30</u>	<u>33</u>	<u>36</u>

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

<sup>2</sup>Pursuant 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 (1) The pendency of a request for a finding of Equivalent Facilitation or Technical  
2 Infeasibility;

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

5 (3) Financial hardship;

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

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

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

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

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 **SECTION 1111D – ENFORCEMENT**

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

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

22 The Building Official shall establish within the Department a Disability Access Compliance  
23 Unit to enforce this Chapter 11D and to perform such other duties as the Building Official shall  
24 require. The Unit shall have at least one CASp Inspector from the Department and such other  
25 departmental employees as the Building Official deems appropriate. The Compliance Unit shall consult

1 and coordinate with other City agencies with review authority over the permits necessary to comply  
2 with the requirements of this Chapter, including but not limited to the Planning Department and  
3 Department of Public Works, and any other City agencies that the Building Official determines are  
4 necessary or desirable to achieve the purposes of this Chapter.

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

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

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

24 **1113D.2. Report to the Board of Supervisors.** Within one year from the effective date of this  
25 Chapter 11D, and following consultation and coordination with other appropriate City departments

1 and agencies, the Department shall submit a report in writing to the Board of Supervisors concerning  
2 the effectiveness of this Chapter and including recommendations, if any, for amendments to this  
3 Chapter. A progress report shall be submitted to the Board of Supervisors once a year thereafter until  
4 completion of this Chapter's disability access improvement program.

5 **SECTION 1114D. NOTICE**

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

12 **SECTION 1115D. ADMINISTRATIVE FEE**

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

19  
20 Section 4. The Building Code is hereby amended by revising Section 105A.3, to read  
21 as follows:

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

23 **105A.3.1 Establishment; composition; purpose.** Pursuant to the provisions of  
24 Section 19957.5 of the Health and Safety Code of the State of California, there is hereby  
25 established an Appeals Board to be known as the Access Appeals Commission composed of

1 five members to hear written appeals brought by any person regarding action taken by the  
2 Department in the enforcement of the requirements of Part 5.5 (commencing with Section  
3 19955), Division 13 of the Health and Safety Code of the State of California, including the  
4 exceptions contained in Section 19957 thereof, as well as action taken by the Department in  
5 the enforcement of the disability access and adaptability provisions of this code.

6 \* \* \* \*

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

19 \* \* \* \*

20 Section 5. Effective and Operative Dates.

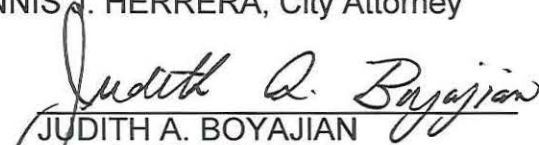
21 (a) This ordinance shall become effective 30 days after enactment. Enactment occurs  
22 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
23 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the  
24 Mayor's veto of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

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

1 Section 6. Directions to Clerk. The Clerk of the Board of Supervisors shall forward a  
2 copy of this ordinance to the California Building Standards Commission upon its enactment.  
3

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

6 By:

  
7 JUDITH A. BOYAJIAN  
8 Deputy City Attorney

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