

[Administrative, Planning, and Campaign and Governmental Conduct Codes - Disability Access Improvements for Small Businesses and Landlord Obligations]

Ordinance amending the San Francisco Administrative Code by adding Chapter 38, Sections 38.1 through 38.6; amending the San Francisco Planning Code Sections 790.90, 790.91, and 790.102; amending the San Francisco Campaign and Governmental Conduct Code Section 3.400; requiring commercial landlords leasing to small businesses for public accommodations to: 1) bring ground floor entrances to, and exits from, the building into compliance with applicable state and federal disability access laws; 2) inform small business tenants of the potential legal and financial liabilities for failure to comply with those laws; 3) include in any new or amended leases a provision addressing the respective obligations of the landlord and small business tenant to bring the leased premises into compliance with those access laws; 4) require the City to give priority to building permit applications for work to bring space leased to small business tenants into compliance with those access laws; 5) allow small self-service restaurants and retail coffee stores to exclude the square footage of floor area required for disabled access from the calculation of maximum allowable square footage for such uses under applicable zoning restrictions; and 6) adopt environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and Planning Code Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strike-through normal~~.

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

Section 1. Findings.

1 (a) The Planning Department has determined that the actions contemplated in this
2 Ordinance are in compliance with the California Environmental Quality Act (California Public
3 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
4 Board of Supervisors in File No. _____, and is incorporated herein by reference.

5 (b) Pursuant to Planning Code Section 302, this Board finds that this Ordinance's
6 Planning Code amendments will serve the public necessity, convenience and welfare for the
7 reasons set forth in Planning Commission Resolution No. _____, and the Board
8 incorporates those reasons herein by reference. A copy of Planning Commission Resolution
9 No. _____ is on file with the Clerk of the Board of Supervisors in File No. _____.

10 (c) This Board finds that the Planning Code amendments are consistent with the
11 General Plan and with the priority policies of Planning Code Section 101.1 for the reasons set
12 forth in Planning Commission Resolution No. _____, and the Board hereby
13 incorporates those reasons herein by reference.
14

15 Section 2. The San Francisco Administrative Code is hereby amended by adding
16 Chapter 38, Sections 38.1 through 38.6, to read as follows:

17 **CHAPTER 38: COMMERCIAL LANDLORDS; ACCESS**
18 **IMPROVEMENT OBLIGATIONS AND NOTICE TO SMALL**
19 **BUSINESS TENANTS REGARDING DISABILITY ACCESS**

20 **SEC. 38.1. FINDINGS.**

21 *Given the significant number of small businesses in the City and County of San Francisco, the*
22 *Board of Supervisors finds:*

23 *(1) A strong public interest in ensuring that small businesses that are public accommodations*
24 *comply with applicable disability access laws and in ensuring clear communications between*
25

1 Commercial Landlords and their Small Business Tenants regarding their respective responsibilities for
2 disability access.

3 (2) A strong public interest in ensuring clear communication between Commercial Landlords
4 and Small Business Tenants regarding the extent to which the Commercial Landlord has implemented
5 required disability access improvements.

6 (3) A strong public interest in protecting Small Business Tenants from unforeseen expenses and
7 liabilities arising out of required disability access improvements.

8 (4) The objectives of this ordinance are to ensure that (i) ground floor entrances and exits of
9 real property leased to Small Businesses comply with applicable disability access requirements before
10 a Small Business Tenant opens for business on the property and, (ii) every new and amended
11 commercial lease between a Commercial Landlord and a Small Business Tenant clearly and expressly
12 addresses their respective obligations regarding disability access improvements, and to help encourage
13 and facilitate disability access improvements by Commercial Landlords and Small Businesses.

14
15 **SEC 38.2. DEFINITIONS.**

16 For purposes of this Chapter 38:

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

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

23 (c) “Small Business” is a business that occupies 5,000 square feet of space or less in San
24 Francisco for use as a Public Accommodation.

1 (d) "Small Business Lease" is a real property lease between a Commercial Landlord and a
2 Small Business Tenant, for real property consisting of 5,000 rentable square feet or less, used as a
3 place of Public Accommodation, and either (i) entered into on or after October 1, 2012 or (ii) amended
4 on or after October 1, 2012.

5 (e) "Small Business Tenant" is a Small Business that leases space in San Francisco from a
6 Commercial Landlord.

7
8 **SEC. 38.3. REQUIRED INSPECTION; DISABLED ACCESS ENTRANCE AND EXIT**
9 **IMPROVEMENTS; NOTICE OF DISABLED ACCESS INSPECTION AND OBLIGATIONS.**

10 Effective on October 1, 2012 Commercial Landlords of any facilities used, or planned or zoned
11 for use by a Small Business as a Public Accommodation ("Public Accommodation Facility") shall,
12 before entering into a Small Business Lease:

13 (a) Ensure accessible ground floor entrances to, and exits from, the Commercial Landlord's
14 Public Accommodation Facility by removing all architectural barriers to disability access to the extent
15 that such improvements are required by, and readily achievable within the meaning of, any applicable
16 provisions of the Code of Federal Regulations sections 28 CFR 36.304 and 36.305, before such
17 Commercial Landlord leases commercial space in such building to a Small Business Tenant; and

18 (b) Provide written notice to each prospective Small Business Tenant (the "Disability Access
19 Notice") before signing a Small Business Lease that:

20 (1) Informs the Small Business Tenant of the Commercial Landlord's obligations under
21 Section 38.5 to ensure that each Small Business Lease must expressly include a provision in which the
22 Commercial Landlord and Small Business Tenant agree upon their respective obligations and
23 liabilities for making and paying for required disability access improvements on the property; and

24 (2) Informs the Small Business Tenant that it may be subject to legal and financial
25 liabilities if the Small Business Tenant uses the premises for a Public Accommodation but fails to bring

1 the premises into compliance with applicable Federal and State disability access laws even though the
2 Small Business Tenant does not own the real property.

3 (c) The Commercial Landlord must obtain the Small Business Tenant's signature on the
4 Disability Access Notice on or before execution of the Small Business Lease, and must inform the Small
5 Business Tenant that the Commercial Landlord will be able to use the Small Business Tenant's
6 signature on the Disability Access Notice as proof that the Small Business Tenant has read and
7 understood the contents of the Disability Access Notice.

8
9 **SEC. 38.4. PRIORITY PERMIT PROCESSING.**

10 Where a Commercial Landlord or Small Business permit applicant demonstrates that the
11 Commercial Landlord has provided evidence of the provision of Disability Access Notice as required
12 under Section 38.3 for that real property, the City shall give priority under Section 3.400 of the
13 Campaign and Governmental Conduct Code to any permit application for work consisting primarily of
14 disabled access improvements as determined by the Zoning Administrator, to that real property.
15 Nothing in this Section 38.4 is intended to limit the scope of priority permit processing that current law
16 requires the Planning Department, Department of Building Inspection, or the Department of Public
17 Works to provide to permit applications.

18
19 **SEC. 38.5. LEASE PROVISIONS REGARDING RESPECTIVE OBLIGATIONS OF**
20 **LANDLORDS AND TENANTS FOR DISABILITY ACCESS IMPROVEMENTS.**

21 Beginning October 1, 2012, every Commercial Landlord shall include in each Small Business
22 Lease a provision in which the Commercial Landlord and Small Business Tenant agree upon their
23 respective obligations and liabilities for making and paying for required disability access
24 improvements on the real property.

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

3
4 **SEC. 3.400. PERMIT APPLICATION PROCESSING.**

5 (a) EQUAL TREATMENT OF PERMIT APPLICANTS. It shall be the policy of the
6 Department of Building Inspection, the Planning Department, the Department of Public Works
7 and the officers and employees of such departments to treat all permit applicants the same
8 regardless of the relationship of the applicant and/or the applicant's representatives to any
9 officer or employee of the City and County and regardless of whether the applicant hires a
10 permit consultant to provide permit consulting services. Intentional preferential treatment of
11 any permit applicant and/or the applicant's representatives by any officer or employee of the
12 Department of Building Inspection, the Planning Department, or the Department of Public
13 Works shall subject the officer or employee to disciplinary action for official misconduct.

14 (b) APPLICATION PRIORITY. It shall be the policy of the Department of Building
15 Inspection, the Planning Department, the Department of Public Works and the officers and
16 employees of such departments to review, consider, and process all applications, revisions,
17 corrections and other permit-related material in the order in which that type of material is
18 received unless there is a written finding of a public policy basis for not doing so, such as the
19 involvement of public funds in the project for which the permit is sought, or the response to a
20 delay caused by an earlier procedural error in processing the permit or another permit for the
21 same project. Absent such a finding, any officer or employee of the Department of Building
22 Inspection, the Planning Department, the or Department of Public Works who intentionally
23 fails to review, consider and process all applications, revisions, corrections and other permit-
24 related material in the order in which that type of material is received shall be subject to
25 disciplinary action for official misconduct. The Department of Building Inspection, the

1 Planning Department, and the Department of Public Works shall each adopt written guidelines
2 for determining when there is a public policy basis for processing permit material out of order.

3 For purposes of this section, and any corresponding written guidelines, work consisting primarily of
4 disabled access improvements for real property shall qualify as a public policy basis for processing
5 permit material out of order, on a priority basis.

6 (c) PERMIT PROCESSING CODE OF CONDUCT. No later than 60 days after the
7 effective date of this Article, the Ethics Commission shall adopt a code of conduct for permit
8 processing (the "Permit Processing Code of Conduct") containing ethical guidelines for permit
9 applicants, permit consultants, and officers and employees of the Department of Building
10 Inspection, the Planning Department, the and Department of Public Works. The Permit
11 Processing Code of Conduct shall be posted in a conspicuous place in each department, and
12 a copy shall be distributed to each officer of the City and County who makes or participates in
13 making decisions related to permit applications.

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

15
16 Section 4. The San Francisco Planning Code is hereby amended by amending
17 Sections 790.90, 790.91, and 790.102, to read as follows:

18 **SEC. 790.90. RESTAURANT, LARGE FAST-FOOD.**

19 (a) A retail eating or drinking use which provides ready-to-eat food to a high volume of
20 customers at a high turnover rate for consumption on or off the premises, which may or may
21 not provide seating. Such use exhibits the following characteristics:

22 (1) A gross floor area of 1,000 square feet or more, provided, however, that a
23 Small Self Service Restaurant that exceeds 1,000 square foot limit due to disabled access improvements
24 shall not be subject to the maximum square footage calculation under Section 790.91 and shall not be
25 considered a Large Fast-Food Restaurant;

- 1 (2) A limited menu of ready-to-eat food prepared in advance of customer
2 orders, or food which is able to be quickly prepared for consumption on or off the premises;
3 (3) Food served in disposable wrappers or containers;
4 (4) Food is ordered and served at customer service counter;
5 (5) Food is paid for prior to consumption;
6 (6) Public food service area, including queuing areas and service counters
7 without fixed seats, which counters are designed specifically for the sale and distribution of
8 food and beverages;
9 (7) Food available upon a short waiting time.

10 It does not include retail grocery stores with accessory take-out food activity, as
11 described in Section 703.2(b)(1)(C) of this Code, self-service specialty food use, as described
12 in Section 790.93 of this Code, or retail uses which sell prepackaged or bulk ready-to-eat
13 foods with no-site food preparation area, such as confectionery or produce stores. When a
14 fast-food restaurant operates within and in conjunction with another retail use, such as a retail
15 grocery store, the area of the fast-food restaurant use shall be measured to include the area
16 devoted to food preparation and service, seating and separate public food service counters,
17 excluding fish, poultry and meat counters.

18 (c) It may provide off-site beer, wine, and/or liquor sales for consumption off the
19 premises (with ABC licenses 20 or 21) or on-site beer and/or wine sales for drinking on the
20 premises (with ABC licenses 40, 41 or 60). If it serves liquor for drinking on the premises (with
21 ABC licenses 47 or 48), or does not admit minors (with ABC licenses 42 or 61), then it shall
22 also be considered a bar, as defined in Section 790.22 of this Code.

23 (d) It shall be conducted in accordance with the following conditions:

- 24 (1) All debris boxes shall be kept in enclosed structures.
25

1 (2) The operator shall be responsible for cleaning the sidewalk within a one-
2 block radius daily to maintain the sidewalk free of paper or other litter during its business
3 hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.

4 (3) Noise and odors shall be contained within the premises so as not to be a
5 nuisance to nearby residents or neighbors.

6
7 **SEC. 790.91. RESTAURANT, SMALL SELF-SERVICE.**

8 (a) A retail eating or eating and drinking use which provides ready-to-eat food for
9 consumption on and off the premises and which may or may not provide seating. Such use
10 exhibits the following characteristics:

11 (1) Contains fewer than 50 seats and less than 1,000 square feet of gross floor
12 area, excluding the minimum additional square footage required to facilitate disabled access under
13 local, state and federal disability access laws, including the applicable disability access provisions of
14 the California Building Code;

15 (2) A limited menu of ready-to-eat food prepared in advance of customer
16 orders, or food which is able to be quickly prepared for consumption on or off the premises;

17 (3) Food served in disposable wrappers or containers;

18 (4) Food is ordered and served at customer service counter;

19 (5) Food is paid for prior to consumption;

20 (6) Public food service area, including queuing areas and service counters
21 without fixed seats, which counters are designed specifically for the sale and distribution of
22 food and beverages;

23 (7) Food available upon a short waiting time.

24 It does not include retail grocery stores with accessory take-out food activity, as
25 described in Section 703.2(b)(1)(C) of this Code, self-service specialty food use, as described

1 in Section 790.93 of this Code, or retail uses which sell prepackaged or bulk ready-to-eat
2 foods with no-site food preparation area, such as confectionery or produce stores. When a
3 fast-food restaurant operates within and in conjunction with another retail use, such as a retail
4 grocery store, the area of the fast-food restaurant use shall be measured to include the area
5 devoted to food preparation and service, seating and separate public food service counters,
6 excluding fish, poultry and meat counters.

7 (b) It may provide off-site beer, wine and/or liquor sales for consumption off the
8 premises (with ABC licenses 20 or 21) or on-site beer and/or wine sales for drinking on the
9 premises (with ABC licenses 40, 41 or 60). If it serves liquor for drinking on the premises
10 (with ABC licenses 47 or 48) or does not admit minors (with ABC licenses 42 or 61), then it
11 shall also be considered a bar, as defined in Section 790.22 of this Code.

12 (c) It shall be conducted in accordance with the following conditions:

13 (1) All debris boxes shall be kept in enclosed structures.

14 (2) The operator shall be responsible for cleaning the sidewalk within a one-
15 block radius daily to maintain the sidewalk free of paper or other litter during its business
16 hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.

17 (3) Noise and odors shall be contained within the premises so as not to be a
18 nuisance to nearby residents or neighbors.

19 (d) It shall not be required to operate within an enclosed building pursuant to Section
20 703.2(b)(1) so long as it is also a Mobile Food Facility as defined in Section 102.31. Any
21 associated outdoor seating and/or dining area is subject to regulation as an Outdoor Activity
22 Area as set forth elsewhere in this Code.

23
24 **SEC. 790.102. SALES AND SERVICES, OTHER RETAIL.**

1 A retail use which provides goods and/or services but is not listed as a separate zoning
2 category in zoning category numbers .41 through .63 listed in Article 7 of this Code, including
3 but not limited to, sale or provision of the following goods and services:

4 (a) General groceries. As used herein, general groceries means:

5 (1) An individual retail food establishment that:

6 (A) Offers a diverse variety of unrelated, non-complementary food and
7 non-food commodities, such as beverages, dairy, dry goods, fresh produce and other
8 perishable items, frozen foods, household products, and paper goods;

9 (B) May provide beer, wine, and/or liquor sales for consumption off the
10 premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer
11 and wine) or type 21 (off-sale general) within the accessory use limits as set forth in Section
12 703.2(b)(1)(C)(vi);

13 (C) Prepares minor amounts or no food on-site for immediate
14 consumption; and

15 (D) Markets the majority of its merchandise at retail prices.

16 (b) Specialty groceries. As used herein, specialty groceries means:

17 (1) An individual retail food establishment that:

18 (A) Offers specialty food products, such as baked goods, pasta, cheese,
19 confections, coffee, meat, seafood, produce, artisanal goods and other specialty food
20 products, and may also offer additional food and non-food commodities related or
21 complementary to the specialty food products;

22 (B) May provide beer, wine, and/or liquor sales for consumption off the
23 premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer
24 and wine) or type 21 (off-sale general) within the accessory use limits as set forth in Section
25 703.2(b)(1)(C)(vi);

1 (C) Prepares minor amounts or no food on-site for immediate
2 consumption; and

3 (D) Markets the majority of its merchandise at retail prices.

4 (c) Pharmaceutical drugs and personal toiletries;

5 (d) Personal items such as tobacco and magazines;

6 (e) Self-service laundromats and dry cleaning, where no portion of a building occupied
7 by such use shall have any opening other than fixed windows and exits required by law within
8 50 feet of any R District;

9 (f) Household goods and service (including paint, fixtures and hardware, but excluding
10 other building materials);

11 (g) Variety merchandise, pet supply stores and pet grooming services;

12 (h) Florists and plant stores;

13 (i) Apparel and accessories;

14 (j) Antiques, art galleries, art supplies and framing service;

15 (k) Home furnishings, furniture and appliances;

16 (l) Books, stationery, greeting cards, office supplies, copying service, music and
17 sporting goods;

18 (m) Toys, gifts, and photographic goods and services; and

19 (n) Retail coffee stores. As used herein, retail coffee store means:

20 (1) A retail drinking use which provides ready-to-drink coffee and/or other
21 nonalcoholic beverages for consumption on or off the premises, which may or may not
22 provide seating. Its intended design is not to serve prepared ready-to-eat food for
23 consumption on or off the premises, except where a conditional use is granted for an
24 exception in the West Portal NCD pursuant to the "Specific Provisions for the West Portal
25 District." Such use exhibits the following characteristics:

1 (A) Contains no more than 15 seats with no more than 400 square feet of
2 floor area devoted to seating, excluding any seating areas or square feet required to facilitate
3 disabled access under local, state and federal disability access laws, including the applicable disability
4 access provisions of the California Building Code,

5 (B) A limited menu of beverages prepared on the premises and able to
6 be quickly prepared for consumption on or off the premises,

7 (C) Beverages served in disposable or nondisposable containers for
8 consumption on or off the premises,

9 (D) Beverages are ordered and served at a customer service counter,

10 (E) Beverages are paid for prior to consumption,

11 (F) Public service area, including queuing areas and service counters,
12 which counters are designed specifically for the sale and distribution of beverages;

13 (G) Beverages are available upon a short waiting time,

14 (H) Equipment to prepare beverages for consumption,

15 (I) Limited amount of nonprepackaged food goods may be served, such
16 as pastries or similar goods,

17 (J) No on-site food preparation, and no equipment to cook or reheat food
18 or prepare meals other than that connected to beverage preparation, except where a
19 conditional use is granted for an exception in the West Portal NCD pursuant to the “Specific
20 Provisions for the West Portal District.”

21 (K) Coffee beans, tea, syrups, herbs and other beverage-based products
22 and equipment to make and/or reconstitute beverages or consume coffee, tea and/or other
23 beverages may be sold.

24 It may include any use permitted for specialty grocery, as defined in Section
25 790.102(b), but if so, such use shall not include accessory take-out food activity, as described

1 in Section 703.2(b)(1)(C) of this Code, except to the extent permitted by this Subsection
2 790.102(n). It is distinct and separate from a small self-service or large fast-food restaurant,
3 as defined in Section 790.90 and 790.91 of this Code, or a full-service restaurant as defined in
4 Section 790.92 of this Code.

5 (2) It shall be conducted in accordance with the following conditions:

6 (A) All debris boxes shall be kept in enclosed structures,

7 (B) The operator shall be responsible for cleaning the sidewalk in front of
8 or abutting the building to maintain the sidewalk free of paper or other litter during its business
9 hours, in accordance with Article 1, Section 34 of the San Francisco Police Code,

10 (C) Noise and odors shall be contained within the premises so as not to
11 be a nuisance to nearby residents or neighbors.

12 This Section excludes tourist motels, as distinguished from tourist hotels in Section
13 790.46 of this Code, amusement game arcades as defined in Section 790.4 of this Code and
14 household goods self-storage facilities, which are included in storage as defined in Section
15 790.117 of this Code. It also excludes the sale of heating fuel and the sale or rental of
16 commercial equipment (excluding office equipment) and construction materials, other than
17 paint, fixtures and hardware.

18
19 **Section 4. General Provisions.**

20 (a) **Severability.** If any section, subsection, sentence, clause, or phrase of this
21 ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of
22 competent jurisdiction, such decision shall not affect the validity of the remaining portions of
23 the ordinance. The Board of Supervisors hereby declares that it would have passed this
24 ordinance and each and every section, subsection, sentence, clause, or phrase not declared
25

1 invalid or unconstitutional without regard to whether any portion of this ordinance would be
2 subsequently declared invalid or unconstitutional.

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

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

11
12 Section 5. **Effective Date.** This ordinance shall become effective 30 days from the
13 date of passage.

14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 ADINE VARAH
18 Deputy City Attorney