

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
Kerry Birnbach, Senior Policy Analyst  
**Small Business Commission, City Hall, Room 448**

FROM: Alisa Somera, Clerk, Public Safety and Neighborhood Services  
Committee, Board of Supervisors

DATE: December 23, 2021

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services 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. 211105**

**Resolution stating that the City and County of San Francisco supports notice and compliance opportunities for small businesses facing lawsuits or violations related to Americans with Disabilities Act accommodations; and calling for additional support, assistance, and information for Small Businesses to comply with the American with Disabilities 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.

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**RESPONSE FROM SMALL BUSINESS COMMISSION - Date:** \_\_\_\_\_

\_\_\_\_\_ **No Comment**

\_\_\_\_\_ **Recommendation Attached**

\_\_\_\_\_  
**Chairperson, Small Business Commission**

1 [Supporting Notice and Compliance Opportunities for Small Businesses Facing Lawsuits or  
2 Violations Related to Americans with Disabilities Act Accommodations]

3 **Resolution stating that the City and County of San Francisco supports notice and**  
4 **compliance opportunities for small businesses facing lawsuits or violations related to**  
5 **Americans with Disabilities Act accommodations; and calling for additional support,**  
6 **assistance, and information for Small Businesses to comply with the American with**  
7 **Disabilities Act.**

8  
9 WHEREAS, The Americans with Disabilities Act has played a critical role in protecting  
10 people with disabilities from discrimination in employment, transportation, and access to any  
11 facilities open to the public; and

12 WHEREAS, Passed in 1990, the Americans With Disabilities Act did not assign a  
13 federal agency to enforce its requirements; and

14 WHEREAS, Under existing federal law, a defendant is deemed liable for damages for  
15 each instance of discrimination relating to a construction-based accessibility standard; and

16 WHEREAS, The private right of action to enforce ADA does have an important role in  
17 ensuring compliance, yet there is a trend of lawsuits being filed against small businesses to  
18 extort settlements in ways that do not actually expand access for the disabled; and

19 WHEREAS, Two plaintiffs have filed over 1,000 combined Americans With Disabilities  
20 Act (ADA) lawsuits across California since the pandemic began; and

21 WHEREAS, Small businesses in San Francisco, and particularly in Chinatown, are still  
22 recovering from pandemic but are the hardest hit by these financially burdensome lawsuits  
23 which can at times cause them to go deep in debt, or even go out of business; and

24 WHEREAS, Senate Bill 269 was signed into law by California Governor Jerry Brown in  
25 2016, and gives small businesses the important opportunity to fix ADA violations before

1 getting sued under state law; small businesses with less than 50 employees are now required  
2 to be given both notice and time to cure the violation before facing penalties under state law;  
3 and

4 WHEREAS, The opportunities to correct violations before facing lawsuits and penalties  
5 still does not exist under federal law, in particular the procedural mechanisms imposed by  
6 state law under SB 269 are generally not followed by federal courts; and

7 WHEREAS, San Francisco Mayor London N. Breed has expressed concern about  
8 predatory ADA lawsuits and their impact on small businesses and subsequently allocated city  
9 funds to help businesses conduct American with Disabilities Act compliance inspections and  
10 bring merchants up to code; and

11 WHEREAS, San Francisco District Attorney Chesa Boudin has launched a criminal  
12 investigation into the series of lawsuits and assembled an advisory task force to support small  
13 businesses that are facing ADA lawsuits; now, therefore, be it

14 RESOLVED, The San Francisco Board of Supervisors supports small businesses  
15 being provided with notice and opportunities to correct a violation before facing lawsuits or  
16 statutory damages, and condemns predatory lawsuits that target vulnerable small businesses;  
17 and

18 FURTHER RESOLVED, The San Francisco Board of Supervisors supports the  
19 Americans with Disabilities Act, and to fully actualize its goals, by providing adequate and  
20 effective outreach, support, and accountability for small businesses to ensure that all people  
21 have full access to facilities open to the public; and

22 FURTHER RESOLVED, California law, under SB 269, offers critical opportunities for  
23 notice and correction for small businesses when faced with potential ADA violations, and  
24 similar provisions should be considered for inclusion within federal law; and

25

1           FURTHER RESOLVED, Additional support should be provided by every level of  
2 government for small businesses that face these lawsuits, to provide them with assistance,  
3 information, resources, and also that they can cure any violations and effectively ensure  
4 access for the disabled; and

5           FURTHER RESOLVED, Additional steps should be taken to provide oversight and  
6 accountability for attorneys that engage in predatory ADA lawsuits; and

7           FURTHER RESOLVED, Copies of this Resolution will be distributed to San Francisco's  
8 federal and state elected representatives and the Attorney General of the State of California.

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