

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

3 **Ordinance amending the San Francisco Administrative Code by adding Chapter 38,**
4 **Sections 38.1 through 38.6, and amending San Francisco Campaign and Governmental**
5 **Conduct Code Section 3.400, all to require commercial landlords leasing properties to**
6 **small businesses for use as public accommodations to: 1) bring public restrooms,**
7 **ground floor entrances to, and exits from, the building into compliance with applicable**
8 **state and federal disability access laws or to disclose to tenants any noncompliance;**
9 **2) inform small business tenants of potential legal and financial liabilities for failure to**
10 **comply with those laws; 3) include in any new or amended leases a provision**
11 **addressing the respective obligations of the landlord and small business tenant to**
12 **bring the leased premises into compliance with those access laws; and 4) to require**
13 **the City to give priority to building permit applications for work to bring space leased**
14 **to small business tenants into compliance with those access laws, and making**
15 **environmental findings.**

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

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

20 Section 1. Environmental Findings. The Planning Department has determined that the
21 actions contemplated in this Ordinance are in compliance with the California Environmental
22 Quality Act (California Public Resources Code Section 21000 et seq.). Said determination is
23 on file with the Clerk of the Board of Supervisors in File No. 111047, and is incorporated
24 herein by reference.
25

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

3 **CHAPTER 38: COMMERCIAL LANDLORDS; ACCESS**
4 **IMPROVEMENT OBLIGATIONS AND NOTICE TO SMALL**
5 **BUSINESS TENANTS REGARDING DISABILITY ACCESS**

6 **SEC. 38.1. FINDINGS.**

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

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

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

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

18 (4) This Chapter is intended to ensure that: (i) public restrooms and ground floor entrances to
19 and exits from real property leased to Small Business Tenants comply with applicable disability access
20 requirements and that Commercial Landlords disclose any noncompliance with such requirements
21 before a Small Business Tenant enters into or renews a lease for the property; (ii) Commercial
22 Landlords and Small Business Tenants receive priority permit processing for work consisting primarily
23 of disability access improvements; and (iii) every new and amended commercial lease between a
24 Commercial Landlord and a Small Business Tenant for premises that will be used as a public
25 accommodation clearly and expressly addresses the respective obligations of the parties regarding

1 disability access improvements. This Chapter is further intended to help encourage and facilitate
2 disability access improvements by Commercial Landlords and Small Business Tenants.

3
4 **SEC 38.2. DEFINITIONS.**

5 For purposes of this Chapter 38:

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

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

12 (c) “Public Accommodation Facility” shall mean property of 7,500 square feet of space or less
13 leased by a Small Business Tenant to be used as a Public Accommodation.

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

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

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

21
22 **SEC. 38.3. DISABILITY ACCESS IMPROVEMENTS; NOTICE OF DISABILITY ACCESS**

23 **OBLIGATIONS.**

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

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

6 (2) Provide written notice to any prospective Small Business Tenant that the public
7 restrooms and/or ground floor entrances and exits currently do not meet the disability access standards
8 of Title 28, Sections 36.304 and 36.305, of the Code of Federal Regulations.

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

12 **DISABILITY ACCESS OBLIGATIONS UNDER**
13 **SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38**

14 Before you, as the Tenant, enter into a lease with us, the Landlord, for the following property
15 [INSERT DESCRIPTION/ADDRESS](the “Property”), please be aware of the following important
16 information about the lease:

17 **You May Be Held Liable for Disability Access Violations on the Property.** Even though you
18 are not the owner of the Property, you, as the tenant, may still be subject to legal and financial
19 liabilities if the Property does not comply with applicable Federal and State disability access laws.
20 You may wish to consult with an attorney prior to entering this lease to make sure that you understand
21 your obligations under Federal and State disability access laws.

22 **The Lease Must Specify Who Is Responsible for Making Any Required Disability Access**
23 **Improvements to the Property.** Under City law, the lease must include a provision in which you, the
24 Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying
25 for required disability access improvements on the property. The lease must also require you and the

1 Landlord to use reasonable efforts to notify each other if they make alterations to the property that
2 might impact accessibility under federal and state disability access laws. You may wish to review those
3 provisions with your attorney prior to entering this lease to make sure that you understand your
4 obligations under the lease.

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

7 Signed: _____, Tenant

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

13 “PLEASE NOTE: The public restrooms and/or ground floor entrances and exits of the
14 Property currently do not meet the disability access standards of Title 28, Sections 36.304 and 36.305,
15 of the Code of Federal Regulations.”

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

18 (d) The Commercial Landlord must obtain the Small Business Tenant's signature on the
19 Disability Access Obligations Notice under subsections (b) and (c) on or before execution or
20 amendment of the Small Business Lease.

21
22 **SEC. 38.4. PRIORITY PERMIT PROCESSING FOR DISABILITY ACCESS WORK.**

23 The City shall give priority under Section 3.400 of the Campaign and Governmental Conduct
24 Code to any permit application from a Commercial Landlord, or Small Business Tenant, or any small
25 business that owns and operates a Public Accommodation facility of 7,500 square feet or less of space

1 in San Francisco, for work consisting primarily of disability access improvements at a Public
2 Accommodation Facility. The Zoning Administrator shall determine whether a permit application
3 qualifies for priority under this Section.

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

6
7 **SEC. 38.5. LEASE PROVISIONS REGARDING OBLIGATIONS OF LANDLORDS AND**
8 **TENANTS FOR DISABILITY ACCESS IMPROVEMENTS.**

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

16
17 **SEC. 38.6. OPERATIVE DATES.**

18 (a) Except as provided in subsection 38.6(c), the provisions of this Chapter 38 shall apply to
19 Small Business Leases of property of 7,500 to 5,001 square feet of space, and to the parties to those
20 leases, entered into, or amended, on or after January 1, 2013.

21 (b) Except as provided in subsection 38.6(c), The provisions of this Chapter 38 shall apply to
22 Small Business Leases of property of 5,000 square feet of space or less, and to the parties to those
23 leases, entered into, or amended, on or after June 1, 2013.

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

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

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

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

1 for determining when there is a public policy basis for processing permit material out of order.
2 For purposes of this section, and any corresponding written guidelines, expediting of work consisting
3 primarily of disability access improvements for real property shall qualify as a public policy basis for
4 processing permit material out of order, on a priority basis.

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

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

14
15 Section 4. General Provisions.

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

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

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

6
7 Section 5. Effective Date. This ordinance shall become effective 30 days from the
8 date of passage.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 ADINE VARAH
14 Deputy City Attorney