

LEGISLATIVE DIGEST
(Substituted 2/23/2016)

[Building, Administrative Codes - Mandatory Disability Access Improvements; Administrative Fee]

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; amending Administrative Code, Chapter 38, to require a building owner to give notice of the mandatory Building Code primary entry and path of travel accessibility requirements in any new or amended public accommodation lease; 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.

Existing Law

Chapter 11B of the Building Code contains disability access requirements adopted by the State of California applicable to the construction and alteration of commercial buildings and other uses that are "places of public accommodation." Title III of the Americans with Disabilities Act (known as the "ADA") also requires that "places of public accommodation" be accessible to persons with disabilities. In addition to federal and state construction-related disability access requirements, the Unruh Civil Rights Act (California Civil Code Section 51 through 51.3) requires that all business establishments provide "full and equal accommodations, advantages, facilities, privileges, or services."

Chapter 38 of the Administrative Code requires that before a building owner leases space to a small business for use as a public accommodation, the owner must either (1) ensure that existing public restrooms, ground floor entrances, and ground floor exits are accessible, if accessibility is required and readily achievable, or (2) provide written notice to the prospective tenant that the property may not currently meet all construction-related accessibility standards.

While the ADA requires the removal of architectural barriers in existing buildings to provide accessibility if barrier removal is readily achievable, California's construction-related disability access requirements are triggered only upon application for a permit to construct or modify a building. California Health and Safety Code Section 17958.7 authorizes the City to enact more restrictive requirements than the State Building Code but requires the Board of Supervisors to

make a finding that any modifications to the State law are reasonably necessary because of climatic, geological, or topographical conditions.

Amendments to Current Law

This ordinance adds Chapter 11D to the Building Code to require that the primary entry or entries and path of travel into any existing building with a “place of public accommodation” be inspected and either comply with minimum accessibility standards or receive from the City a determination that “equivalent facilitation” has been achieved or that compliance is “technically infeasible” or would be an “unreasonable hardship,” as those terms are defined in the Building Code. A building that was constructed under the Building Code in effect on or after January 1, 2002 is presumed to be accessible and exempted from the scope of Chapter 11D. Since Chapter 11D is more restrictive than State law, the Board of Supervisors is required to make the findings of local conditions and forward the legislation to the State Building Standards Commission upon enactment. Chapter 38 of the Administrative Code is amended to provide that the required written notice also inform a Small Business Tenant of the mandatory requirements of Chapter 11D of the Building Code.

Buildings within the scope of Chapter 11D are put into four compliance categories. The Compliance Schedule in Table 1107D provides deadlines for (1) submitting information to the Building Department, (2) filing an application for the building permits required to do any mandatory upgrades, and (3) obtaining the required building permits. All mandated work must be completed within 18 months of the date an application for a building permit is required to be filed. The Building Official may grant one extension of time for no more than six months from the compliance deadlines; any additional extensions of time must be granted by the Access Appeals Commission. In no event may the time to complete the mandatory work be extended beyond six years from the effective date of Chapter 11D. To encourage voluntary upgrades to disability access elements, in addition to those mandated for the Primary Entry or Entries and Accessible Entrance Route(s), the valuation of both the mandatory disability access improvements and any additional voluntary improvements that follow the Building Code’s recommended order of priority may be used to comply with future path of travel upgrade requirements.

If unable to comply with the mandated Code requirements, the building owner may request a determination of equivalent facilitation, technical infeasibility, or unreasonable hardship. The Building Department, in consultation with the Access Appeals Commission and other City departments or agencies, will develop standard guidelines and other documents to be used for making these determinations. A request that does not comply with these standards will have to be approved by the Access Appeals Commission.

A Disability Access Compliance Unit will be established within the Building Department to enforce the requirements of Chapter 11D and to perform such other duties as the Director of the Department requires. The Compliance Unit will have at least one Building Department CASp Inspector and will consult and coordinate with representatives from the Planning

Department, Department of Public Works, and other City agencies with review authority over the permits required to comply with Chapter 11D or that the Director of the Building Department determines should be included. In addition to any duties that the Director of the Building Department may assign to the Compliance Unit, the Unit will track and maintain records; coordinate review of checklists, documents, and permits; provide information on Chapter 11D's requirements to building owners and tenants, as well as to members of the public; provide guidance, training and assistance to the Building Department's plan review staff and field inspectors; and develop informational material. In addition to any other permit fees that may apply, the Department will charge the owner of each property within the scope of Chapter 11D the administrative fee in Table 1A-D of the Building Code to compensate the Department for the costs of the disability access improvement program.

The requirements of Chapter 11D become operative 60 days after enactment. Within one year of the Chapter's effective date, the Building Department must submit a written report to the Board of Supervisors concerning the effectiveness of Chapter 11D and include any recommendations for amendments. A progress report must be submitted to the Board once a year thereafter until completion of the disability access improvement program.

Chapter 11D expressly states that nothing in the Chapter is intended to (1) relieve the owner or operator of a place of public accommodation of their obligation to comply with the requirements of any Federal or State law, including but not limited to the Americans with Disabilities Act, or to modify or extend the time for compliance with any such law or (2) interfere with any contractual obligations between the owner of a building within the scope of Chapter 11D and any lessee of space within the building.

Background Information

California Building Code Section 11B-202.4 ranks an accessible entrance as the accessibility element that should be given the highest priority in making disability access improvements. However, the California Commission on Disability Access has found that not having an accessible entry and path of travel into the building is one of the top ten construction-related violations. Because of San Francisco's hilly topography, narrow sloping sidewalks, old building stock with narrow facades, and buildings often constructed to the property lines and/or adjacent to the fronting sidewalk, San Francisco has many buildings housing places of public accommodation that have either inaccessible front entries, inaccessible access routes into the building, or both. Building owners often require their tenants to assume the responsibility for complying with code requirements but disability access improvements often are not financially feasible for small businesses with short-term leases. Thus, the Building Code's assumption that disability access and other improvements will be made over time does not, in fact, always occur in these buildings. The challenges of San Francisco's topography and built environment are the local conditions supporting the enactment of more restrictive requirements than the State Building Code.

The City has a strong interest in ensuring that (1) all places of public accommodation in San Francisco are in compliance with state and federal disability access laws and (2) building owners who lease all or portions of their buildings for use as places of public accommodation assume responsibility for either bringing their buildings into compliance with these laws or obtaining a determination from the City that compliance is infeasible or would be an unreasonable hardship. The City demonstrated its commitment to this public interest by enacting Ordinance 187-12 in September 2012, which added Chapter 38 to the Administrative Code. Chapter 38 requires that before a building owner leases space to a small business for use as a public accommodation, the owner must either (1) ensure that existing public restrooms, ground floor entrances, and ground floor exits are accessible, if accessibility is required and readily achievable, or (2) provide written notice to the prospective tenant that the property may not currently meet all construction-related accessibility standards. The mandate of Chapter 11D furthers the City's objectives.

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