

1 [Building Code - Mandatory Disability Access Improvements for Places of Public
2 Accommodation - Extension of Time Deadlines - Deletion of Administrative Fee]

3 **Ordinance amending the Building Code to extend the times for existing buildings with**
4 **a place of public accommodation either to have all primary entries and paths of travel**
5 **into the building accessible to persons with disabilities or to receive a City**
6 **determination of equivalent facilitation, technical infeasibility, or unreasonable**
7 **hardship; to extend the period for granting extensions from those deadlines; to extend**
8 **the time to submit the Department of Building Inspection’s report on the disability**
9 **access improvements program to the Board of Supervisors; authorizing the Building**
10 **Official to waive the requirements for an inspection and submittal of information for**
11 **those building owners who have complied with the requirements under other permits;**
12 **requiring the building owner to provide 30 days’ written notice to business tenants if a**
13 **permit is required to remediate the entryway or sidewalk; eliminating the administrative**
14 **fee to implement the disability access improvement program; restating the findings of**
15 **local conditions under the California Health and Safety Code; and directing the Clerk of**
16 **the Board of Supervisors to forward this Ordinance to the California Building**
17 **Standards Commission upon final passage.**

18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Board amendment additions** are in double-underlined Arial font.
22 **Board amendment deletions** are in ~~strikethrough Arial font~~.
23 **Asterisks (* * * *)** indicate the omission of unchanged Code
24 subsections or parts of tables.

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

25 Section 1. Background and General Findings.

1 (a) Pursuant to Charter Section D3.750-5, the Building Inspection Commission
2 considered this ordinance at a duly noticed public hearing held on April 18, 2018.

3 (b) Chapter 11D of the Building Code was enacted on April 22, 2016, by Ordinance
4 No. 51-16, which became effective on May 22, 2016. Chapter 11D establishes a timeline for
5 the owner of an existing building with a place of public accommodation to have the building
6 inspected for compliance with accessible entry and path of travel requirements and, if not in
7 compliance, to either bring the building into compliance or obtain a finding from the City of
8 equivalent facilitation, technical infeasibility, or unreasonable hardship. Extensions of time
9 may be granted by the Director of the Department of Building Inspection and the Access
10 Appeals Commission but not beyond six years from Chapter 11D's effective date. A report to
11 the Board of Supervisors from the Department of Building Inspection was due in May 2017.

12 (c) Ordinance No. 200-17 extended for one year the original time for compliance
13 with the accessible entry and path of travel requirements, the six-year limitation on extensions
14 of time, and the May 2017 deadline for submission of the Department's report to the Board of
15 Supervisors.

16 (d) This ordinance (i) extends each of those three deadlines as extended by
17 Ordinance No. 200-17 for an additional six months; (ii) uses the definition of Place of Public
18 Accommodation in Chapter 2 of the Building Code instead of the definition in the California
19 Construction-Related Accessibility Compliance Act; (iii) supplements the list of factors in the
20 Unreasonable Hardship definition to include, where necessary and for purposes of Chapter
21 11D only, relevant factors listed in what is an Undue Hardship or is Readily Achievable in Title
22 III of the Americans with Disabilities Act (42 USC Sections 12181 – 12189) and its
23 implementing regulations; (iv) authorizes the Building Official to waive the requirements for an
24 inspection and submission of the Checklist for building Owners who elected to comply with
25 this ordinance's requirements under other permits prior to the compliance deadlines; and

1 (v) requires the Owner to provide 30 days' written notice to business tenants if a permit is
2 required to remediate the entryway or sidewalk. .

3
4 Section 2. Restatement of Local Conditions under California Health and Safety Code
5 Section 17958.7. As stated in Ordinance No. 51-16:

6 (a) San Francisco is an approximately 47-square mile peninsula with many hills and
7 steep streets. The sidewalks are narrow, crowded, and often sloping; much of the building
8 stock is old and often was constructed to the property line and/or adjacent to the fronting
9 sidewalk with no or minimal setbacks.

10 (b) The City has numerous defined neighborhood commercial districts, which
11 conveniently provide retail goods and services to neighborhood residents and workers as well
12 as visitors to the area. A common feature of these older neighborhood shopping areas is
13 small-scale development and a pattern of small buildings with a narrow frontage and a
14 continuous facade line that abuts the fronting sidewalk. Another common feature is the
15 commercial-residential mixed use of the buildings and a pattern of commercial space on the
16 ground floor with residential flats on the upper floors.

17 (c) This combination of sloping streets, narrow sidewalks, and an old stock of small,
18 multi-use buildings with narrow facades that were constructed to the property line and/or
19 abutting sidewalk has resulted in a large number of San Francisco buildings in which services
20 are provided to the public, that have steps to the front entrance and other elements that do not
21 comply with federal and state disability access requirements.

22
23 Section 3. The Building Code is hereby amended by revising Sections 1102D, 1103D,
24 1104D, 1106D, 1107D, 1108D and 1113D, and deleting Section 1115D, to read as follows:
25

1 **SECTION 1102D – DEFINITIONS**

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

3 * * * *

4 **“Place of Public Accommodation.”** As defined in Chapter 2 of the Building Code
5 ~~Section 55.52 of the California Construction-Related Accessibility Compliance Act~~ and 42
6 USC Section 12181(7) of the Americans with Disabilities Act of 1990, as ~~these Acts are~~
7 amended from time to time.

8 * * * *

9 **“Unreasonable Hardship.”** As defined in Chapter 2 of the Building Code. If the
10 Building Official, or the Access Appeals Commission in any unreasonable hardship
11 determination made under Section 1105D, determines that any of the factors that the Building
12 Code requires to be considered in evaluating an Unreasonable Hardship request are not
13 applicable because the required scope of work is limited to the disability access improvements
14 mandated by this Chapter 11D, the Building Official or Access Appeals Commission may
15 supplement the criteria by considering any applicable factor for determining what is an Undue
16 Hardship or is Readily Achievable in Title III of the Americans with Disabilities Act (42 USC
17 Sections 12181 – 12189) and its implementing regulations.

18
19 **SECTION 1103D – COMPLIANCE CATEGORIES**

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

1 **Category One:** The Primary Entry or Entries and the Accessible Entrance Route(s)
2 comply with Code requirements. A building qualifies under Category One if any of the
3 following descriptions applies:

4 (a) A building or portion thereof was constructed or altered under a permit
5 application filed prior to July 1, 1992 and all Primary Entries and Accessible Entrance Routes
6 are in compliance with the requirements of the 1998 California Building Code.

7 (b) A building or portion thereof was constructed or altered under a permit
8 application filed on or after July 1, 1992, and prior to January 1, 2002, all Primary Entries and
9 Accessible Entrance Routes are in compliance with the requirements of the 1998 California
10 Building Code or a later Building Code in effect at the time of any permit application for a
11 tenant improvement or other alteration, and the Department gave final approval of the
12 accessible entry work under the construction permit or any alteration permits.

13 (c) A building is eligible to use the California Historical Building Code, a permit
14 application was filed on or after January 1, 1995, all Primary Entries and Accessible Entrance
15 Routes are in compliance with the California Historical Building Code in effect at the time of
16 the permit application, and the Department gave final approval of the accessible entry work
17 under the construction permit or any alteration permits.

18 (d) A building is within the scope of Chapter 4D of the Existing Building Code, which
19 mandates earthquake retrofit of certain existing Wood-Frame Buildings, and the Owner
20 elected pursuant to Section 1107D to comply with the requirements of this Chapter prior to the
21 compliance deadlines in Table 1107D.

22 (e) A building or portion thereof was altered, or is proposed to be altered, under a
23 permit application filed on or after the effective date of this Chapter 11D and the Owner
24 elected pursuant to Section 1107D to comply with the requirements of this Chapter prior to the
25 compliance deadlines in Table 1107D.

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2 **SECTION 1104D – INSPECTION AND SUBMISSION OF PRIMARY ENTRY COMPLIANCE**
3 **CHECKLIST**

4 **1104D.1. Category One Buildings.** The Owner of a building classified in Section 1103D as
5 Category One shall obtain an inspection of the elements on the Department’s Category One
6 Primary Entry Compliance Checklist by an Inspector. On or before the time for compliance
7 specified in Section 1107D, the Owner shall submit to the Department’s Disability Access
8 Compliance Unit a copy of the Checklist completed and signed by the person who performed
9 the inspection and including his or her business contact information and a professional stamp,
10 CAsP number, or California State License Bureau contractor’s license number, whichever is
11 applicable.

12 If any elements on the Checklist are found by the Inspector or licensed general
13 contractor to be not in compliance with the standards for accessible entries set forth in the
14 applicable California Building Code or California Historical Building Code, or the Department
15 did not give final approval of the accessible entry work, the noncomplying elements shall be
16 clearly specified in detail, the building shall be reassigned by the Building Official to the
17 appropriate Category, and the Owner shall comply with all requirements of that Category. The
18 Building Official’s decision is appealable to the Building Inspection Commission pursuant to
19 Section 77.3(b) of the Administrative Code.

20 **Exception:** For Category One subcategories (d) and (e), the Building Official may
21 waive the requirement for an inspection and submittal of the Checklist if the Building Official
22 determines that an inspection or documents submitted under other permit applications are the
23 equivalent of the inspection and Checklist submittal requirements of this Chapter 11D.

24 * * * *

1 **SECTION 1106D – BUILDING PERMIT REQUIRED; INSPECTION AND COMPLETION OF**
 2 **WORK; VALUATION APPLIED TO FUTURE PROJECTS; NOTICE TO TENANT(S)**

3 **1106D.1. Building Permit Required.** A building permit is required to make any and all
 4 modifications to a building either mandated or authorized by this Chapter 11D. All work
 5 required by this Chapter 11D shall be considered by the Department to be barrier removal and
 6 no additional path of travel upgrade shall be required. Only those elements that are actually
 7 altered will be required to comply with the current requirements of this Code.

8 If a permit is required to remediate the entryway or the sidewalk, the Owner shall
 9 provide written notice to the business tenant or tenants of the building a minimum of 30 days'
 10 prior to filing the permit application with the Department.

11 * * * *

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

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

20

TABLE 1107D COMPLIANCE SCHEDULE <i>1</i>				
<u>Category</u>	<u>Category Description</u>	Submit compliance Checklist and specify compliance Option	File application for required building permit(s)	Obtain required building permit(s) <u>1, 2</u>

25

1	Category One Buildings	<i>In compliance</i>	<i>24 January 1, 2019</i>	N/A	N/A
2	Category Two Buildings	<i>No steps but barriers</i>	<i>24 January 1, 2019</i>	<i>27 April 1, 2019</i>	<i>39 April 1, 2020</i>
3	Category Three Buildings	<i>One step with barriers</i>	<i>36 June 1, 2019</i>	<i>39 September 1, 2019</i>	<i>51 September 1, 2020</i>
4	Category Four Buildings	<i>1+ step with other barriers</i>	<i>42 December 1, 2019</i>	<i>45 March 1, 2020</i>	<i>57 March 1, 2021</i>

8 ¹ ~~Unless otherwise specified, time period is in months measured from the effective date of this Chapter 11D.~~

9 ² Pursuant to Section 1106D.4, all mandated work must be completed within the time periods specified in Section 106A.4.4 of this Code for Permit Expiration unless an extension of time is granted pursuant to Section 1108D.

12 **SECTION 1108D – EXTENSIONS OF TIME**

13 (a) For good cause shown, the Building Official may grant one extension of time for
 14 up to six months from the compliance timelines in Table 1107D. For good cause shown, one
 15 or more additional extensions of time may be granted by the Access Appeals Commission
 16 pursuant to Section 1110D; provided, however, that in no event shall the Commission extend
 17 the time to complete the mandatory work required by this Chapter 11D beyond December 1,
 18 2023 ~~seven years from the effective date of this Chapter 11D~~. The Commission’s decision shall be
 19 final.

20 * * * *

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

23 * * * *

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

1 departments and agencies, on or before December 1, 2018 the Department shall submit a report
2 in writing to the Board of Supervisors concerning the effectiveness of this Chapter 11D and
3 including recommendations, if any, for amendments to this Chapter. A progress report shall
4 be submitted to the Board of Supervisors once a year thereafter until completion of this
5 Chapter's disability access improvement program.

6
7 **~~SECTION 1115D -- ADMINISTRATIVE FEE~~**

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

14
15 Section 4. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
24 additions, and Board amendment deletions in accordance with the "Note" that appears under
25 the official title of the ordinance.

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

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

By: _____
JUDITH A. BOYAJIAN
Deputy City Attorney
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