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San Francisco Administrative Code

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

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SEC. 38.1. FINDINGS.

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

- (1) The City has a strong public interest in ensuring that small businesses operating public accommodations comply with applicable disability access laws, and in ensuring clear communications between Commercial Landlords and their Small Business Tenants regarding their respective responsibilities for disability access improvements.
- (2) The City has a strong public interest in ensuring clear communication between Commercial Landlords and Small Business Tenants regarding the extent to which the Commercial Landlord has or has not implemented required disability access improvements prior to the start or renewal of a lease.
- (3) The City has a strong public interest in protecting Small Business Tenants from unforeseen expenses and liabilities arising out of required disability access improvements.
- (4) This Chapter is intended to ensure that: (i) public restrooms and ground floor entrances to and exits from real property leased to Small Business Tenants comply with applicable disability access requirements and that Commercial Landlords disclose any noncompliance with such requirements before a Small Business Tenant enters into or renews a lease for the property; (ii) Commercial Landlords and Small Business Tenants receive priority permit processing for work consisting primarily of disability access improvements; and (iii) every new and amended

commercial lease between a Commercial Landlord and a Small Business Tenant for premises that will be used as a public accommodation clearly and expressly addresses the respective obligations of the parties regarding disability access improvements. This Chapter is further intended to help encourage and facilitate disability access improvements by Commercial Landlords and Small Business Tenants.

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.1 amended by Ord. 205-86, App. 6/6/86; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended by Ord. 144-07, File No. 070133, App. 6/29/2007; Ord. 300-08, File No. 081155, App. 12/19/2008; amended and redesignated as Planning Code Sec. 411.2 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.2. DEFINITIONS.

For purposes of this Chapter 38:

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

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

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

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

(e) "Small Business Tenant" shall mean a business leasing 7,500 square feet of space or less from a Commercial Landlord in San Francisco for use as a Public Accommodation Facility.

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.2 amended by Ord. 224-84, App. 5/15/84; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended and redesignated as Planning Code Sec. 411.1 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.3. DISABILITY ACCESS IMPROVEMENTS; NOTICE OF DISABILITY ACCESS OBLIGATIONS.

(a) Before entering into or amending a Lease, a Commercial Landlord shall either:

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

(2) Provide written notice to any prospective Small Business Tenant that the property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits.

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

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

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

You May Be Held Liable for Disability Access Violations on the Property. Even though you are not the owner of the Property, you, as the tenant, as well as the Property owner, may still be subject to legal and financial liabilities if the leased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering this lease to make sure that you understand your obligations under Federal and State disability access laws. The Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the Administrative Code in your requested language. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call 415-554-6134.

The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property. Under City law, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the leased Property. The lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased Property that might impact accessibility under federal and state disability access laws. You may wish to review those provisions with your attorney prior to entering this lease to make sure that you understand your obligations under the lease.

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

Signed: _____, Tenant

Signed: _____, Landlord

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

"PLEASE NOTE: The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits."

(d) The Commercial Landlord must sign, and obtain the Small Business Tenant's signature on, the Disability Access Obligations Notice under subsections (b) and (c) on or before execution or amendment of the Lease and shall provide the tenant with a copy of the Small Business Commission's Access Information Notice as defined under Section 38.6 in the tenant's requested language.

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.3 added by Ord. 224-81, App. 5/5/81; amended by Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended by Ord. 144-07, File No. 070133, App. 6/29/2007; Ord. 300-08, File No. 081155, App. 12/19/2008; amended and redesignated as Planning Code Sec. 411.3(a) by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.3-1. RESERVED.

(Added by Ord. 144-07, File No. 070133, App. 6/29/2007; repealed by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.4. PRIORITY PERMIT PROCESSING FOR DISABILITY ACCESS WORK.

The City shall give priority under Section 3.400 of the Campaign and Governmental Conduct Code to any permit application from a Commercial Landlord, or Small Business Tenant, or any small business that owns and operates a Public Accommodation of 7,500 square feet or less of space in San Francisco, for work consisting primarily of disability access improvements at that Public Accommodation. The Director of the Department of Building Inspection shall determine whether a permit application qualifies for priority under this Section.

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

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.4 amended by Ord. 491-85, App. 10/31/85; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended and redesignated as Planning Code Sec. 411.3(e) by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.5. LEASE PROVISIONS REGARDING OBLIGATIONS OF LANDLORDS AND TENANTS FOR DISABILITY ACCESS IMPROVEMENTS.

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

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.5 amended by Ord. 224-84, App. 5/15/84; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended by Ord. 144-07, File No. 070133, App. 6/29/2007; amended and redesignated as Planning Code Sec. 411.4 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.6. SMALL BUSINESS COMMISSION ACCESS INFORMATION NOTICE.

On or before January 1, 2013, the Small Business Commission, in consultation with the Mayor's Office on Disability and the City Attorney's Office, shall develop and distribute a written notice or pamphlet ("Access Information Notice") in multiple languages regarding local, state, and federal disability access laws that may apply to businesses in San Francisco. The Small Business Commission shall distribute copies of such Notice to the Planning Department, the Department of Building Inspection, the Department of Public Health, the Treasurer/Tax Collector, the Mayor's Office on Disability, and the Assessor-Recorder's Office (collectively, the "Departments"). Those Departments shall also make such Access Information Notice publicly available in their respective offices and through their websites.

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.6 added by Ord. 224-81, App. 5/5/81; amended by Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended by Ord. 144-07, File No. 070133, App. 6/29/2007; amended and redesignated as Planning Code Sec. 411.3(d) by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.7. OPERATIVE DATES.

(a) Except as provided in subsection 38.7(c), the provisions of this Chapter 38 shall apply to Leases of property of 7,500 to 5,001 square feet of space, and to the parties to those leases, entered into, or amended, on or after January 1, 2013.

(b) Except as provided in subsection 38.7(c), the provisions of this Chapter 38 shall apply to Leases of property of 5,000 square feet of space or less, and to the parties to those leases, entered into, or amended, on or after June 1, 2013.

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

(Added by Ord. [187-12](#), File No. 111047, App. 9/11/2012, Eff. 10/11/2012)

(Former Sec. 38.7 added by Ord. 224-81, App. 5/5/81; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended and redesignated as Planning Code Sec. 411.5 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.8. RESERVED.

(Former Sec. 38.8 amended by Ord. 224-84, App. 5/15/84; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; redesignated as Planning Code Sec. 411.6 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.8.5. RESERVED.

(Added by Ord. 224-84, App. 5/15/84; amended by Ord. 76-03, File No. 020592, App. 5/2/2003; repealed by Ord. 199-04, File No. 040141, App. 8/5/2004)

SEC. 38.9. RESERVED.

(Former Sec. 38.9 added by Ord. 224-81, App. 5/5/81; amended by Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; redesignated as Planning Code Sec. 411.7 by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.10. RESERVED.

(Former Sec. 38.10 amended by Ord. 18-87, App. 1/29/87; Ord. 322-00, File No. 001917, App. 12/28/2000; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended by Ord. 300-08, File No. 081155, App. 12/19/2008; repealed by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.11. RESERVED.

(Former Sec. 38.11 amended by Ord. 491-85, App. 10/31/85; Ord. 322-00, File No. 001917, App. 12/28/2000; Ord. 76-03, File No. 020592, App. 5/2/2003; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; repealed by Ord. 108-10, File No. 091275, App. 5/25/2010)

SEC. 38.12. RESERVED.

(Former Sec. 38.12 added as Sec. 38.17 by Ord. 224-81, App. 5/5/81; renumbered 38.12 by Ord. 322-00, File No. 001917, App. 12/28/2000; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; repealed by Ord. 108-10, File No. 091275, App. 5/25/2010)

(Former Sec. 38.12 repealed by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.13. RESERVED.

(Former Sec. 38.13 added as Sec. 38.18 by Ord. 224-81, App. 5/5/81; renumbered 38.13 by Ord. 322-00, File No. 001917, App. 12/28/2000; repealed and replaced by Ord. 199-04, File No. 040141, App. 8/5/2004; amended and redesignated as Planning Code Sec. 411.8 by Ord. 108-10, File No. 091275, App. 5/25/2010)

(Former Sec. 38.13 repealed by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.14. RESERVED.

(Added by Ord. 199-04, File No. 040141, App. 8/5/2004; repealed by Ord. [55-11](#), File No. 101523, App. 3/23/2011)

(Former Sec. 38.14 added by Ord. 224-81, App. 5/5/81; repealed by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.15. RESERVED.

(Added by Ord. 224-81, App. 5/5/81; repealed by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.16. RESERVED.

(Added by Ord. 224-81, App. 5/5/81; repealed by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.17. RESERVED.

(Added by Ord. 224-81, App. 5/5/81; renumbered as Sec. 38.12 by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.18. RESERVED.

(Added by Ord. 224-81, App. 5/5/81; renumbered as Sec. 38.13 by Ord. 322-00, File No. 001917, App. 12/28/2000)

SEC. 38.45. RESERVED.

(Added by Ord. 223-84, App. 5/10/84; amended by Ord. 76-03, File No. 020592, App. 5/2/2003; repealed by Ord. 199-04, File No. 040141, App. 8/5/2004)