State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

June 14, 2022

To: All District Attorneys, City Attorneys, and County Counsel in California

RE: Enforcement of State Disability Access Laws in Business Establishments and Public Accommodations

Dear Colleague:

Californians with disabilities have historically experienced widespread discrimination in business establishments and public accommodations. They have often been excluded from everyday activities, such as shopping at stores or going to restaurants.[1] Equal access to business establishments and places of public accommodation is necessary to ensure that people with disabilities can lead independent lives and fully participate in all aspects of society.

Unfortunately, discrimination against individuals with disabilities in business establishments and places of public accommodation is still prevalent in California. The Office of the Attorney General continues to receive complaints that Californians with disabilities are being denied basic rights at business establishments and public accommodations throughout the state, including the right to physical access and service animals. Recently, our office has also received complaints regarding outdoor dining programs established in response to the COVID pandemic, as some businesses participating in these programs have created physical barriers for people with disabilities accessing public sidewalks.

As the Attorney General of the State of California, I have a strong interest in ensuring compliance with the state's disability access laws and regulations so that persons with disabilities have equal access to the services and facilities of places that are open to the public. I encourage you to join us in our effort to ensure that business establishments and public accommodations within your jurisdiction comply with disability access laws.

State and federal disability access laws mandate equal access for people with disabilities and prohibit discrimination against them in business establishments and public accommodations.

[1] U.S. Dept. of J. (U.S. DOJ) Civ. Rights Div., *ADA Update: A Primer for Small Business* (Mar. 16, 2011) <https://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.htm> (as of May 20, 2022).

Under California's Unruh Civil Rights Act, people with disabilities are entitled to full and equal accommodations, facilities, privileges, advantages, or services "in all business establishments of every kind whatsoever." (Civ. Code, § 51, subd. (b).) The California Disabled Persons Act also provides that people with disabilities have a right to the full and free use of sidewalks, public buildings, medical facilities, and other public places. (Civ. Code, § 54, subd. (a); see also Civ. Code, § 54.1.)[2]

Similarly, Title III of the Americans with Disabilities Act (ADA) and its implementing regulations make it unlawful for private entities to discriminate against people with disabilities in public accommodations, such as hotels, restaurants, grocery stores, places of education, and homeless shelters.[3] (42 U.S.C. § 12182; 28 C.F.R. § 36.104.) People with disabilities are entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. (28 C.F.R. § 36.201.) To ensure access for people with disabilities, public accommodations must remove architectural barriers in existing facilities, including communication barriers, where removal is readily achievable.[4] (28 C.F.R. § 36.304.) They must also provide appropriate auxiliary aids and services to ensure effective communication with people with disabilities and make reasonable modifications in their policies, practices, or procedures to make goods, services, facilities, privileges, advantages, or accommodations available to individuals with disabilities. (28 C.F.R. §§ 36.302, 36.303.) A

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[2] The California Department of Fair Employment and Housing (DFEH) provides information on California's Unruh Civil Rights Act and the right of individuals with disabilities to equal access. (See DFEH, *Discrimination Laws Regarding People with Disabilities* <https://www.dfeh.ca.gov/peoplewithdisabilities/#otherResourcesBody> [as of May 20, 2022]; *Public Access Discrimination and Civil Rights, Fact Sheet* (Dec. 2020) <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_UnruhFactSheet.pdf> [as of May 20, 2022].)

[3] The U.S. DOJ Civil Rights Division provides resources regarding Title III of the ADA, including guidance on physical access, service animals, and effective communication. (See U.S. DOJ, *Title III: Resources for Business and People with Disabilities* <https://www.ada.gov/ta_titleiii.html> [as of May 20, 2022].)

[4] Information regarding removal of a "readily achievable barrier" and inspections of buildings for compliance with applicable federal accessibility standards is available from the Department of General Services (DGS). (See DGS, *CASp Property Inspection*, *Business Owners Frequently Asked Questions* <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Certified-Access-Specialist-Property-Inspection> [as of May 20, 2022]). Further information and guidance on federal accessibility standards is available at the website of the U.S. DOJ and the U.S. Access Board, in addition to regulations from the U.S. Department of Housing and Urban Development (HUD). (See U.S. DOJ, *ADA Standards for Accessible Design* <https://www.ada.gov/2010ADAstandards_index.htm> [as of May 20, 2022]; U.S. Access Board, *Uniform Federal Accessibility Standards (UFAS)* (1984) <https://www.access-board.gov/aba/ufas.html> [as of May 20, 2022]; HUD, *Fair Housing Accessibility Guidelines,* 58 Fed. Reg. 9472 (Mar. 6, 1991).) For further information regarding accessibility requirements for people with disabilities, please also see "Accessible Design Standards for People with Disabilities," Attorney General Rob Bonta, letter to all city and county building officials in California, June 14, 2022.

violation of the ADA also constitutes a violation of both the California Unruh Civil Rights Act and the California Disabled Persons Act. (Civ. Code, §§ 51, subd. (f); 54, subd. (c).)[5]

There are several ways in which city attorneys, county counsels, and district attorneys can help ensure Californians with disabilities have equal access to business establishments and public accommodations in their jurisdictions. For example, city attorneys and county counsels can educate private entities who own businesses and other places of public accommodation in their jurisdictions about their obligations under state law and provide guidance and technical assistance to help them correct disability rights violations.[6] Where voluntary compliance is not forthcoming, city attorneys and district attorneys can also compel compliance with state disability access laws through litigation under the Unruh Act and/or the Disabled Persons Act. (See Civ. Code, §§ 52, subd. (c); 55.1.)

Your office plays a critical role in ensuring equal access for Californians with disabilities in business establishments and public accommodations throughout the State, and supporting their full participation in all aspects of society. Thank you for your time and anticipated effort in helping us achieve this goal.

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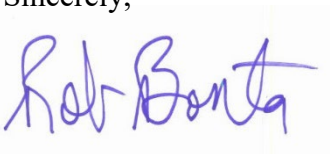
[5] Other state and federal laws may also apply to a business that receives state and/or federal funds. (See Gov. Code, § 11135, subd. (a); Cal. Code Regs., tit. 2, § 11150 [prohibiting discrimination against people with disabilities under any program or activity that is conducted, operated, or administered by the State or by any state agency, is funded directly by the State, or receives any financial assistance from the State]; 29 U.S.C. § 794 [Section 504 of the Rehabilitation Act] [prohibiting discrimination against people with disabilities under any program or activity receiving federal financial assistance].)

[6] City attorneys and county counsel may wish to refer small businesses to their local building departments or building inspectors for technical assistance on state building code compliance. (See, e.g., City of San Jose, Planning, Building and Code Enforcement, *Disabled Access Requirements: What Building and Business Owners Should Know and Do* (Mar. 17, 2020) <https://www.sanjoseca.gov/home/showpublisheddocument/25953> [as of May 20, 2022].) Additionally, business owners may be referred to the California Capital Access Program Americans with Disabilities Act (CalCAP/ADA) Financing Program, which assists small businesses with financing the costs to alter or retrofit existing small business facilities to comply with the ADA's requirements. (See Cal. St. Treasurer, *Americans with Disabilities Act Financing Program* <https://www.treasurer.ca.gov/cpcfa/calcap/ada/summary.asp> [as of May 20, 2022].) DGS's Access Compliance Advisory Reference Manual also provides guidance on how to comply with state accessibility requirements. (See DGS, Div. of the St. Architect, *Access Compliance Reference Materials*, *2019 California Access Compliance Advisory Reference Manual* (Mar. 23, 2021) <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Access-Compliance-Reference-Materials> [as of May 20, 2022].)

If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,



ROB BONTA
Attorney General

State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

June 14, 2022

To: All City and County Building Officials in California

RE: Accessible Design Standards for People with Disabilities

Dear Local Building Official:

California has long been a pioneer in requiring that both publicly and privately owned facilities be accessible to persons with disabilities.[1] However, architectural access to public and private facilities remains a challenge for Californians with disabilities. For example, in 2020, the California Commission on Disability Access received 9,532 complaints alleging construction-related physical access violations, including inaccessible parking and paths of travel.[2] The Office of the Attorney General is committed to ensuring that accessible design standards are complied with and enforced. I urge you to join us in our commitment to architectural accessibility by reviewing and updating your policies and protocols for compliance with accessible design standards for people with disabilities.

Local building departments are the front-line agencies for ensuring compliance with California's accessible design standards. (Gov. Code, § 4453, subd. (b); Health and Saf. Code, § 19958; Cal. Code Regs., tit. 24, part 2.) This compliance has two components: Local building departments must ensure that their own government's new construction and rehabilitation projects are accessible to people with disabilities, while also working directly with private developers to ensure accessibility in new construction and rehabilitation projects, and review accessibility complaints from the public.

Multiple state laws set minimum requirements for developers to design and construct facilities that are accessible to, and usable by, people with disabilities. The California Building

[1] Our state laws predate the federal Americans with Disabilities Act (ADA) by over 20 years. For example, both Government Code section 4450 and the California Disabled Persons Act were passed in 1968.

[2] Cal. Com. on Disability Access, *2020 Annual Report to the Legislature* (2020) at pp. 19-31 <https://www.dgs.ca.gov/-/media/Divisions/CCDA/2020-Annual-Report-to-the-Legislature.pdf?la=en&hash=AFC03EB43CF91FFAD0D20011F993DC20ECA2C518> (as of May 20, 2022).

Standards Code (the Code) sets scoping and technical requirements for all new construction and rehabilitation projects in the State, with a particular focus on accessibility for people with disabilities in Chapters 11A and 11B.[3] In addition to the state standards, the Code requires facilities to conform to at least the same level of accessibility as the federal Americans with Disabilities Act (ADA, 42 U.S.C. § 12101 et seq.). (Gov. Code, § 4459.) Government Code section 11135 also incorporates the ADA for programs or activities that are conducted, operated, or administered by the State; are funded directly by the State; or receive any state financial assistance. In the housing context, the California Fair Employment and Housing Act (FEHA) also requires developers to design and construct covered housing projects with certain accessible features. (Gov. Code, § 12955.1.)

Local jurisdictions and developers must also be aware of other accessible design standards in federal laws and their implementing regulations. Both public and private entities are subject to the ADA.[4] (42 U.S. Code § 12131 et seq. and 42 U.S. Code § 12181 et seq.) Entities subject to the ADA must also comply with the 2010 ADA Standards for Accessible Design.[5] Section 504 of the Rehabilitation Act of 1973 requires accessibility and prohibits discrimination against people with disabilities under any program or activity receiving federal financial assistance. (Section 504, 29 U.S.C. § 794.) Recipients of federal financial assistance subject to Section 504 must also ensure that their projects comply with related regulations.[6] Both public and private multifamily housing developments must comply with the accessibility requirements of the Fair Housing Amendments Act of 1988 (FHAA, 42 U.S.C. § 3601 et seq.) and its implementing regulations and related guidance.[7] If such developments receive federal financial

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[3] Further information on the California Building Standards Code's accessible design requirements, including the *State of California Access Compliance Advisory Manual*, is available at the Department of General Services, Division of the State Architect's website (see <https://www.dgs.ca.gov> and <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Access-Compliance-Reference-Materials> [as of May 20, 2022]).

[4] Title II of the ADA applies to state and local public entities. Title III of the ADA applies to places of public accommodation owned, leased or operated by a private entity. This includes businesses that are generally open to the public such as restaurants, movie theaters and day care facilities, as well as commercial facilities such as factories, warehouses, or office buildings. Further information about both Title II and Title III of the ADA is available at the U.S. Department of Justice (U.S. DOJ) ADA website (see <https://www.ada.gov/ada_title_II.htm> and <https://www.ada.gov/ada_title_III.htm> [as of May 27, 2022]).

[5] U.S. DOJ, *ADA Standards for Accessible Design* (2010) <https://www.ada.gov/2010ADAstandards_index.htm> (as of May 20, 2022); U.S. DOJ has published a guidance document on the 2010 ADA Standards for Accessible Design (U.S. DOJ, *Guidance on the 2010 ADA Standards for Accessible Design* (Sept. 15, 2010) <https://www.ada.gov/regs2010/2010ADAStandards/Guidance2010ADAstandards.htm> [as of May 20, 2022]). Local building departments can find further ADA compliance information for both local governments and businesses at the same website (U.S. DOJ, *ADA Technical Assistance* <https://www.ada.gov/ta-pubs-pg2.htm> [as of May 20, 2022]).

[6] 24 C.F.R. Part 8 and U.S. Access Board, *Uniform Federal Accessibility Standards (UFAS)* (1984) <https://www.access-board.gov/aba/ufas.html> (as of May 20, 2022).

[7] U.S. Dept. of Housing and Urban Development (HUD), *Fair Housing Accessibility Guidelines,* 58 Fed. Reg. 9472 (Mar. 6, 1991); HUD, *Fair Housing Act Design Manual* (Apr. 1998)

assistance from the U.S. Department of Housing and Urban Development (HUD), they should also look to HUD's 2014 Alternative Accessibility Standard or "Deeming Notice" for information regarding compliance with the ADA and Section 504.[8]

Multiple state and federal accessible design standards may apply to a single development. The state of California offers several resources to facilitate compliance with state and federal accessible design standards. For example, a state-certified expert known as a Certified Access Specialist (CASp)[9] can advise developers and conduct inspections with regard to accessible design. Additionally, the California Capital Access Program's ADA (CalCAP/ADA) Financing Program assists small businesses with financing the costs to alter or retrofit existing small business facilities to comply with ADA requirements.[10]

The obligation to make facilities accessible to people with disabilities does not end when the building is completed. Following construction of a development, owners and operators of facilities must comply with state and federal obligations to provide program access and make reasonable accommodations and reasonable modifications where necessary to provide an individual with a disability equal opportunity to use and enjoy the premises. (Gov. Code, §§ 12955, subd. (a), 12927, subd. (c)(1) (FEHA); Civ. Code, § 51, subd. (b) (Unruh Act); Civ. Code, § 54.1, subds. (a)(1), (b)(3)(B) (Disabled Persons Act); 28 C.F.R. §§ 35.130 and 36.201-36.202 (ADA); 29 U.S.C. § 794 and 24 C.F.R §§ 8.20, 8.24, 8.33 (Section 504); 42 U.S.C. §§ 3604(f)(2)(A), 3604(f)(3)(B) (FHAA).) Local jurisdictions must also ensure their land use and zoning codes provide for reasonable accommodations.[11]

<https://www.huduser.gov/portal/publications/destech/fairhousing.html> (as of May 20, 2022); and HUD and U.S. DOJ, *Joint Statement of HUD and the DOJ Accessibility (Design and Construction) Requirements for Covered Multifamily Dwellings under the Fair Housing Act* (Apr. 30, 2013) <https://portal.hud.gov/hudportal/documents/huddoc?id=JOINTSTATEMENT.pdf> (as of May 20, 2022).

[8] HUD, *Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities,* 79 Fed. Reg. 29671 (May 23, 2014) <https://www.regulations.gov/document/HUD-2014-0042-0001> (as of May 20, 2022).

[9] For more information regarding CASp property inspection, see the Division of the State Architect website at <https://www.dgs.ca.gov/casp> (as of May 20, 2022). A CASp inspection may also provide small businesses some protections against technical accessibility violations. The Division of the State Architect outlines these protections in the "Business Owners Frequently Asked Questions" section of its website at <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Certified-Access-Specialist-Property-Inspection> (as of May 20, 2022).

[10] Cal. St. Treasurer, *Americans with Disabilities Act Financing Program* <https://www.treasurer.ca.gov/cpcfa/calcap/ada/summary.asp> (as of May 20, 2022).

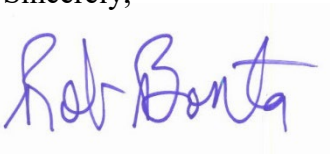
[11] For further guidance, see the Cal. Dept. of Housing and Community Development (HCD)'s website. (HCD, *Building Blocks* <https://www.hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml> [as of May 20, 2022].) See also "Addressing Land Use and Zoning Barriers to Fair Housing for People with Disabilities," Attorney General Rob Bonta, letter to all cities and counties in California, June 14, 2022.

Further, state law requires every local building department to have disability-access complaint and inspection procedures. (Gov. Code, § 4453, subd. (b); Health and Saf. Code, §§ 17951, 19958; Cal. Code Regs., tit. 24, part 2, §§ 1.8.3, 1.8.5, 1.9.1.4.3.)

The Office of the Attorney General has a role in ensuring compliance with these requirements. To ensure uniform and adequate enforcement of California accessible design laws and regulations, the Attorney General has been vested with the authority to investigate complaints and bring legal actions to remedy violations. (Cal. Const., art. V, § 13; Gov. Code, § 4458; Health and Saf. Code, § 19958.5.) This may include investigating allegations that a local building department is not adequately enforcing accessible design laws and regulations, and filing civil actions to remedy such problems when they are identified. Government Code section 4452 also requires correction of deviations from accessible development regulations within 90 days of discovery of the existence of such deviations.

Local building officials have a critical role in ensuring that developers understand and follow accessible design standards for public and private facilities from the outset of construction or rehabilitation and throughout their operation as public accommodations. Thank you for your time in reviewing this letter, and your anticipated effort to ensure enforcement and awareness of state and federal accessible design standards so that Californians with disabilities may have equal access to public and private facilities throughout the state. If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,



ROB BONTA
Attorney General

State of California
Office of the Attorney General

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ATTORNEY GENERAL

June 14, 2022

To: All Cities and Counties in California

RE: Ensuring Access for People with Disabilities to Public Meetings of Local Agencies

Dear Colleague:

Equitable access to public meetings of local agencies and the opportunity to make public comment is critical to the inclusion of Californians with disabilities in governmental decision-making. As the Attorney General of the State of California, I have a strong interest in ensuring that the state's disability access laws and regulations are complied with and enforced so that persons with disabilities have access to public meetings held throughout the State. I encourage you to evaluate your meeting facilities and review your current policies, practices, and technology to ensure that public meetings, which are at the heart of our democratic process, are accessible to Californians with disabilities in compliance with disability access laws.

Conducting such an evaluation promptly and thoroughly is even more important in light of complaints that our office has recently received that several local agencies have failed to provide virtual or telephonic options to attend public meetings, and implemented restrictive in-person public comment policies that have prevented people with disabilities from participating. The harms caused by these restrictions have been especially acute during the COVID pandemic, effectively barring individuals with COVID risk factors from participating in public meetings.

The Ralph M. Brown Act (Brown Act), as amended by AB 3035, requires that local agencies hold meetings open to the public, subject to certain exceptions.[1] (Gov. Code, §§ 54950-54963). All public meetings must take place in locations that are accessible to persons with disabilities, and local agencies must provide reasonable accommodations where necessary for disability access. (See Gov. Code, §§ 54953.2 ["All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal

[1] A "legislative body" covered under the Brown Act includes the governing body of a local agency or any other local body created by state or federal statute. (Gov. Code, § 54952, subd. (a).) The Brown Act also covers a commission, committee, board, or other body of a local agency. (*Id.,* subd. (b).)

rules and regulations adopted in implementation thereof"]; 54961, subd. (a) ["no legislative body of a local agency shall conduct any meeting in any facility…which is inaccessible to disabled persons"]; see also 28 C.F.R. § 35.130(b)(7) ["a public entity shall make reasonable modifications in policies, practices, or procedures when modifications are necessary to avoid discrimination on the basis of disability . . ."].) Holding public meetings in inaccessible facilities or otherwise making them inaccessible may deprive persons with disabilities of the opportunity to fully and meaningfully participate in the democratic process.[2] For example, a building where a meeting is being held may have architectural barriers, such as an inaccessible path of travel into or through the facility, inaccessible meeting areas, inaccessible restrooms, or inaccessible parking (if provided), which may prevent persons who use wheelchairs or other assistive devices from participating in the meeting.[3] If overnight stays are involved, conveniently located accessible lodging should also be a consideration.[4]

A facility is accessible for the purposes of the Brown Act if it fully satisfies state and federal accessibility requirements.[5] The California Building Standards Code sets scoping and technical requirements for all new construction and rehabilitation projects in the State, with particular focus on accessibility for people with disabilities in Chapters 11A and 11B.[6] The California Building Standards Code also requires at least the same level of accessibility as the federal Americans with Disabilities Act (ADA). (Gov. Code, § 4459.) These statutes and regulations mandate that newly constructed buildings and facilities that are publicly funded or part of government programs and activities (or pre-existing buildings and facilities under certain conditions) be accessible to, and usable by, persons with disabilities. Applicable federal accessibility requirements are set forth primarily in the ADA (42 U.S.C. § 12101 et seq.) and Section 504 of the Rehabilitation Act (Section 504, 29 U.S.C. § 794); these statutes'

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[2] The California Department of Rehabilitation (DOR) provides several examples of how public meetings can be made accessible. (See DOR, *Planning Accessible Public Meetings* (Apr. 2009) <https://www.dor.ca.gov/Home/PlanningAccessiblePublicMeetings> [as of May 20, 2022].) The United States Department of Justice (U.S. DOJ) also provides guidance on meeting accessibility, including accessible meeting locations, arrangement of meeting room furniture, and how the meeting information is communicated. (See U.S. DOJ, *Accessible Information Exchange: Meeting on a Level Playing Field* <https://www.ada.gov/business/accessiblemtg.pdf> [as of May 20, 2022].)

[3] See footnote 2, *ante*, U.S. DOJ, at pp. 8-16.

[4] See footnote 2, *ante*, DOR.

[5] For further information regarding accessibility requirements for people with disabilities, please see "Accessible Design Standards for People with Disabilities," Attorney General Rob Bonta, letter to all city and county building officials in California, June 14, 2022.

[6] Further information on the California Building Standards Code's accessible design requirements, including the *State of California Access Compliance Advisory Manual*, is available at the Department of General Services, Division of the State Architect's website (see <https://www.dgs.ca.gov> and <https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Access-Compliance-Reference-Materials> [as of May 20, 2022]).

implementing regulations; and specific design standards, including the ADA Standards for Accessible Design[7] and the Uniform Federal Accessibility Guidelines.[8]

To make a public meeting truly accessible, the public entity must ensure not only physical access to the meeting facility, but access to the information communicated through the meeting. State and federal laws require that local agencies provide effective communication for people with disabilities. (28 C.F.R. § 35.160; see Civ. Code, § 54.) For example, written materials that are distributed to members of the public—such as the agenda and other materials distributed at a public meeting—are subject to the requirement that communication be equally effective for persons with disabilities.[9] Thus, upon receipt of a specific request, a local agency that provides information in written form must make that information available to individuals in a form that is usable by them. (*Ibid.*) Such alternative formats may include screen-readable files loaded on a USB flash drive, audio recordings, large print, or Braille.[10] The format necessary to ensure effective communication will vary with the individual's needs and the length and complexity of the communication involved.[11] These materials must be provided free of charge and sent when the agenda is posted or when a majority of the legislative body's members receive them. (Gov. Code, §§ 54957.5, subd. (d); 54954.1.) Requests for such materials must be honored and the materials delivered for each meeting that calendar year. (Gov. Code, § 54954.1.) Agendas must include information about how a request for accommodations may be made, including the proper recipient and timing of such requests. (Gov. Code, § 54954.2, subd. (a)(1).)

Upon receipt of a specific request, it may be necessary for a local agency to provide auxiliary aids and services to individuals with disabilities to allow full participation in the public meeting. (28 C.F.R. § 35.160(b).) These include, but are not limited to, sign language interpreters, audio recordings, assistive listening devices, real-time transcription, open or closed captioning, and caption decoders for videos. (28 C.F.R. § 35.104(1)-(2).)

Local agencies must also ensure that people with disabilities have access to the public comment process. The Brown Act provides that all members of the public, including people with disabilities, have the right to directly address local governmental bodies on any item of interest to the public that is within the subject matter jurisdiction of those bodies. (Gov. Code, § 54954.3, subd. (a).) The ADA also requires that public entities ensure meaningful access to their programs, services, and activities; make reasonable accommodations; and ensure effective

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[7] U.S. DOJ, *ADA Standards for Accessible Design* (2010) <https://www.ada.gov/2010ADAstandards_index.htm> (as of May 20, 2022).

[8] U.S. Access Board, *Uniform Federal Accessibility Standards (UFAS)* (1984) <https://www.access-board.gov/aba/ufas.html> (as of May 20, 2022).

[9] U.S. DOJ, *ADA, Title II Technical Assistance Manual* (TAM) §7.1000 <https://www.ada.gov/taman2.html> (as of May 20, 2022); Gov. Code, §§ 54954.1; 54954.2; 54957.5, subd. (c).

[10] See footnote 9, *ante*, U.S. DOJ, § II-7.0000.

[11] *Ibid.*

communication. (28 C.F.R. §§ 35.130, 35.149-35.150, 35.160; *Crowder v. Kitagawa* (9th Cir. 1996) 81 F.3d 1480, 1484.) If a local agency provides an opportunity for the general public to comment at a public meeting in person, it should make reasonable accommodations to enable individuals with disabilities to comment through equivalent means. For example, if there is a raised platform for in-person public comment, the local agency must ensure that an accessible route, such as a ramp, is provided, as well as an accessible path of travel leading to it. (Cal. Code Regs., tit. 24, part 1, §11B-206.) Microphones should be adjustable in order to adapt to the height of the speaker.[12]

As discussed above, the COVID pandemic has highlighted the need to accommodate people with disabilities who cannot attend meetings in person because of their disability. This access is particularly important, for example, for individuals with disabilities that result in compromised immune system functioning, or those with mobility-based disabilities that prevent them from traveling to public meetings. Local agencies should provide telephonic or virtual conferencing as "auxiliary aids and services" to afford such individuals an opportunity to observe the meeting and give public comment unless doing so would result in an undue burden on the agency. (28 C.F.R. §§ 35.104(1), 35.160(b), 36.303(a).)

Failure to provide people with disabilities access to public meetings can result in serious consequences for local agencies. Penalties for violation of the Brown Act may include injunctive relief to stop or prevent actual or threatened violations; nullification of actions taken in violation of the Act; and/or criminal misdemeanor sanctions against public officials who knowingly participate in unlawful meetings in which action is taken with the intent to deprive persons of their rights under the Brown Act. (Gov. Code, §§ 54950, 54959, 54960.1.) Local agencies may also incur penalties or expose themselves to legal liability under state and federal disability rights laws for failure to provide people with disabilities access to public meetings. (See, e.g., Gov. Code, § 11137; Civ. Code, § 54.3; 42 U.S.C. § 12133.)

California has long been at the forefront of efforts to require that facilities are fully accessible to persons with disabilities. Moreover, the California Legislature, through the Brown Act, has required that all public meetings of local governmental bodies be accessible to persons with disabilities. Please join me in a renewed commitment to ensure that public meetings, which are central to our democracy, are accessible to all Californians. Again, if you have not done so already, I urge you to evaluate your facilities and review your current policies, practices, and technology with an eye to fulfilling your legal obligations in this regard.

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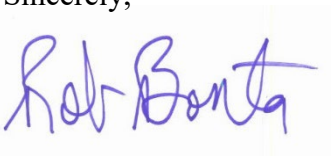
[12] See footnote 2, *ante*, DOR.

If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,



ROB BONTA
Attorney General

State of California
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ROB BONTA
ATTORNEY GENERAL

June 14, 2022

To: All Cities and Counties in California

RE: Addressing Land Use and Zoning Barriers to Fair Housing for People with Disabilities

Dear Colleague:

Discriminatory local land use and zoning processes continue to create significant barriers to housing opportunities for Californians with disabilities. These continuing problems have been documented in, for example, the California Department of Housing and Community Development (HCD)'s Final 2020 Analysis of Impediments to Fair Housing Choice,[1] where stakeholders identified problematic local land use and zoning restrictions among the factors imposing barriers to housing choice for people with disabilities.[2] People with disabilities are highly likely to experience the "worst case" housing needs.[3] They often experience difficulties finding suitable housing at a reasonable cost because of reduced employment options,[4] shortages of housing with accessibility features designed to accommodate the needs of people with sensory and mobility disabilities,[5] and discrimination.[6]

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[1] Cal. Dept. of Housing and Community Development (HCD), *Final 2020 Analysis of Impediments to Fair Housing Choice* (June 2020) <https://www.hcd.ca.gov/policy-research/plans-reports/docs/final2020ai.pdf> (as of May 20, 2022).

[2] *Ibid.* Other factors included a general lack of compliant and accessible units, market forces, and community pushback against the construction or preservation of existing accessible units.

[3] "Worst case" housing need is defined as having very low income while not receiving housing assistance and paying more than half of household income for rent, living in severely inadequate conditions, or both. U.S. Dept. of Housing and Urban Development (HUD), *Worst Case Housing Needs: 2021 Report to Congress* (July 2021) <https://www.huduser.gov/portal/sites/default/files/pdf/Worst-Case-Housing-Needs-2021.pdf> (as of May 23, 2022).

[4] *Ibid.*

[5] White, *Nowhere to Go: The Housing Crisis Facing Americans With Disabilities,* The Atlantic (Dec. 15, 2015) <https://www.theatlantic.com/business/archive/2015/12/renting-with-a-disability/420555/> (as of May 20, 2022) (noting that only 1% of all U.S. rental housing has all five basic accessibility features, which include a step-free entry, a single floor layout, and wide doors and hallways).

[6] See, e.g., Nat. Fair Housing Alliance, *Making Every Neighborhood a Place of Opportunity: 2018 Fair Housing Trends Report* (2018) <https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report.pdf> (as of May 20, 2022).

The State of California, including the Department of Justice, is actively committed to promoting fair housing choice for people with disabilities, including by promulgating and enforcing relevant state laws governing local jurisdictions' exercise of their land use and zoning powers. To ensure your jurisdiction's ongoing compliance with these critical protections, I urge you to review and update your land use and zoning laws, policies, and practices for compliance with state and federal laws. I further urge you to adopt and implement a reasonable accommodations process related to, but separate from, your land use and zoning processes if your jurisdiction has not already done so, and make its availability known throughout your communities.[7]

Local jurisdictions' land use and zoning actions are subject to the California Fair Employment and Housing Act (FEHA, Gov. Code, § 12900 et seq.), its federal counterpart the Fair Housing Amendments Act (FHAA, 42 U.S.C. § 3601 et seq.), and the California Planning and Zoning Law (Gov. Code, § 65000 et seq.), among other laws. Title II of the Americans with Disabilities Act (ADA, 42 U.S.C. § 12131 et seq.) and Section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and require local jurisdictions to make reasonable accommodations to their requirements under certain circumstances. (*Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725, 730-732; see also 28 C.F.R. § 35.130(b)(7).)

The FEHA and the FHAA prohibit cities, counties, or other local governmental agencies from adopting and implementing land use and zoning laws, policies and practices that discriminate based on disability. (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927, subd. (c)(1), 12955, subd. (1).) The FEHA and the FHAA further impose an affirmative duty on local jurisdictions to make reasonable accommodations (i.e., changes or exceptions) to their zoning laws and other land use regulations and practices where necessary to provide people with disabilities equal opportunity in housing.[8] (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927, subd. (c)(1), 12955, subd. (1); Cal. Code Regs., tit. 2, §§ 12161-12162; see, e.g., *Gamble v. City of Escondido* (9th Cir. 1997) 104 F.3d 300, 307 [FHAA affirmatively required city to make reasonable accommodations for residences for people with disabilities]; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941, 945 [municipality's refusal to make reasonable accommodations in its rules when such accommodations may be necessary to afford persons with disabilities equal opportunity for housing violated FHAA]; *City of Edmonds v. Wash. St. Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806, *aff'd sub nom. City of Edmonds v. Oxford House, Inc.* (1995) 514 U.S. 725 (*City of Edmonds*) ["The FHAA imposes an affirmative duty to reasonably accommodate handicapped persons"].)

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[7] In 2001, our office sent a letter urging local jurisdictions to adopt a reasonable accommodations process related to zoning actions. (California Attorney General Bill Lockyer, Letter to All California Mayors, May 15, 2001.)

[8] U.S. Dept. of J. (U.S. DOJ) and HUD, *Joint Statement, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act* (Nov. 10, 2016) <https://www.justice.gov/crt/page/file/909956/download> (as of May 20, 2022).

The California Planning and Zoning Law requires a local jurisdiction to prepare a Housing Element as part of its General Plan. (Gov. Code, § 65302, subd. (c).) The law also prohibits discrimination against affordable housing developments, affordable housing developers, and potential residents by local jurisdictions when carrying out their planning and zoning powers. (Gov. Code, § 65583.) A local jurisdiction's Housing Element must analyze the housing needs of people with disabilities and potential governmental constraints to the development, improvement, and maintenance of housing for people with disabilities; demonstrate local efforts to remove any such constraints; and provide reasonable accommodations for persons with disabilities through programs that remove constraints. (Gov. Code, §§ 65008, 65300, 65583, subd. (c)(3).)

As part of this process, a local jurisdiction must review its land use and zoning policies and procedures to ensure that they:

- Comply with fair housing laws;
- Include a provision for group homes with more than six residents, specifically for people with disabilities, other than those residential zones covered by state law;
- Include a broadened definition of "family" that 1) provides zoning code occupancy standards specific to unrelated adults and 2) complies with fair housing law;
- Evaluate any siting or separation requirements for licensed residential-care facilities to determine the extent to which the local restrictions affect the development and cost of housing;
- Ensure that any minimum distance requirements in the land use element for the siting of special needs housing developments do not impact the development and cost of housing for persons with disabilities; and
- Include alternate residential parking requirements, including reduction, for people with disabilities.[9]

A local jurisdiction must further determine whether it has an established reasonable accommodation procedure, and evaluate that policy to describe:

- The process for requesting a reasonable accommodation retrofit (e.g., a request to build a ramp), and
- The extent to which existing requirements constrain or facilitate the application of:
    - An existing or proposed reasonable accommodation procedure (e.g., as related to permit processing, zoning, building codes, and procedures for the approval of licensed residential-care facilities) and

[9] HCD, *Building Blocks* <https://www.hcd.ca.gov/community-development/building-blocks/constraints/constraints-for-people-with-disabilities.shtml> (as of May 20, 2022).

- Physical accessibility efforts in compliance with the FHAA, the ADA, and federal and state laws and access standards (e.g., retrofit efforts or other measures that provide disability access).[10]

Any reasonable accommodation procedure that your jurisdiction uses should operate promptly and efficiently to ensure that people with disabilities have access to affordable, accessible housing options. The reasonable accommodation procedure should also be independent of existing variance and conditional permit procedures. Several considerations counsel against a local jurisdiction's reliance on such procedures to process reasonable accommodation requests.

First, the criteria for determining whether to grant a variance or conditional use permit differ from those that govern reasonable accommodation requests within the meaning of fair housing laws. Municipalities relying on these land-use-oriented procedures to process reasonable accommodation requests risk wrongful denial of projects in violation of fair housing laws. (See *City of Edmonds*, *supra*, 18 F.3d at pp. 805-806 [noting that enforcement of otherwise neutral rules on health, safety, and land use may discriminate against people with disabilities].) Not only would this violate the affected people with disabilities' housing rights, it would expose the jurisdiction to liability for monetary damages, penalties, and attorneys' fees and costs under state and federal fair housing laws.

Further, reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for people with disabilities. Opposition to such housing is often based on fears, generalizations, stereotypes, and myths about decreases in property values. While these concerns are largely unfounded,[11] they persist nevertheless. The typical variance or conditional use permit process relies on a general "health, safety and welfare" standard which invites opposition based on these fears and stereotypes. In contrast, the reasonable accommodation process evaluates whether a zoning policy change or exception is necessary to make housing accessible for people with disabilities

Ensuring that local jurisdictions' land use and zoning processes comply with state and federal disability rights laws is critical to promote equal housing opportunities for Californians with disabilities. Thank you for your time in reviewing this letter, and your anticipated effort to review your land use and zoning processes to analyze constraints for people with disabilities, and

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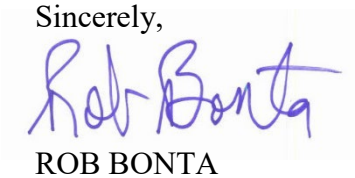
[10] *Ibid.* For further information regarding accessibility requirements for people with disabilities, please see "Accessible Design Standards for People with Disabilities," Attorney General Rob Bonta, letter to all city and county building officials in California, June 14, 2022.

[11] For example, studies across the country have revealed a steady *rise* in property values for homes surrounding supportive housing for people with disabilities. (See, e.g., Furman Center for Real Estate and Urban Policy, *Policy Brief on the Impact of Supportive Housing on Surrounding Neighborhoods: Evidence from New York City* (2008) p. 6 <https://furmancenter.org/files/FurmanCenterPolicyBriefonSupportiveHousing_LowRes.pdf> (as of May 20, 2022); Galster, et al., *The Impacts of Supportive Housing on Neighborhoods and Neighbors* (Oct. 1999) p. xii <https://www.huduser.gov/publications/pdf/support_1.pdf> (as of May 20, 2022).)

to amend them as necessary to include a reasonable accommodations procedure. HCD provides a sample analysis and an example of a reasonable accommodation ordinance from a jurisdiction which has already taken this step that can serve as a model for your jurisdiction.[12] If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may be reached at Michael.Newman@doj.ca.gov.

Sincerely,



ROB BONTA
Attorney General

[12] See footnote 9, *ante*, HCD.