



State of California
Office of the Attorney General

ROB BONTA
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’

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 Design⁷ 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

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.

¹² See footnote 2, *ante*, DOR.

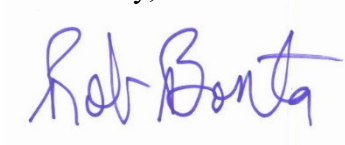
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If you have any questions or comments, please feel free to contact Michael L. Newman, the Senior Assistant Attorney General for the Civil Rights Enforcement Section, which includes the Department of Justice's Disability Rights Bureau. Mr. Newman may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

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is written in a cursive, flowing style.

ROB BONTA
Attorney General