

CALIFORNIA COMMISSION ON DISABILITY ACCESS FULL COMMISSION

Teleconference Meeting Minutes July 28, 2021

1. Call to Order

Chair Chris Downey welcomed everyone and called the meeting of the California Commission on Disability Access (CCDA or Commission) to order at 10:03 a.m. Due to the ongoing health emergency, and consistent with Executive Order N-29-20, this meeting was conducted entirely by Zoom and teleconference.

Roll Call

Staff Member Barsanti called the roll and confirmed the presence of a quorum.

Commissioners Present:

Chris Downey, Chair
Douglas Wiele, Vice Chair
Tiffany Allen
Rob Bonta, Attorney General,
represented by Deputy Attorney
General Anthony Seferian
Ida Clair, State Architect
Drake Dillard
Souraya Sue ElHessen
Brian Holloway
Melissa Hurtado, Senator
represented by Aakash Vashee
Jacqueline Jackson

Brian Jones, Senator
Tom Lackey, Assembly Member
Ashley Leon-Vazquez
Scott Lillibridge
Michael Paravagna

Also Present:

Alfredo Aguerro
Bassam Altwal, CASp, Cal Accessibility
Maria Arias
David Arias
Maria Barabino
Jennifer Bollinger, Office of Legal Services, DGS
David Brandenburger, Newmark Real Estate Services
Marianne Grosner

Commissioners Absent:

Jim Frazier, Assembly Member
Guy Leemhuis, Immediate Past Chair

Staff Present:

Angela Jemmott, Executive Director
Kamran Qazi, Legal Counsel
Adam Barsanti, Associate Governmental
Program Analyst
Theresa Brown, Data and Research
Analyst
Stephanie Groce, Disability Access
Technician
Phil McPhaul, Operations Manager
Davina Saenz, Marketing and Outreach
Analyst

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Brent Jamison, Interagency Support Division, DGS
Michael Jamnetski, Contractor's State License Board
Cindy Jin
Debra Kamm
Rita Loof
Shannon Mulhall, CASp, ADA Coordinator, city of Fresno
Corrina Roy, DGS, Office of Legislative Affairs, DGS

[Note: Agenda Item 11 was taken out of order. These minutes reflect these Agenda Items as listed on the agenda and not as taken in chronological order.]

Pledge of Allegiance

Chair Downey led the Commission in the Pledge of Allegiance.

Housekeeping Items

Staff Member Barsanti reviewed the meeting protocols.

2. Reappointment/Oath – Commissioner Scott Lillibridge

Commissioner Seferian led the swearing-in for reappointment of office for Commissioner Scott Lillibridge.

3. Approval of Meeting Minutes (April 28, 2021) – Action

Motion: Commissioner ElHessen moved to approve the April 28, 2021, California Commission on Disability Access Full Commission Meeting Minutes as presented. Commissioner Paravagna seconded. Motion carried unanimously with no abstentions.

4. Comments from the Public on Issues Not on this Agenda

All public commentators including: Debra Kamm, Rita Loof, Marianne Grosner, Maria Barabino, Maria Arias, David Arias, Alfredo Aguerro, and Cindy Jin asked the Commission to look into local school districts and agencies to allow public participation in a virtual format.

5. Special Introductions

Executive Director Jemmott introduced DGS executive leadership for the CCDA. She asked them to shared how they work with the CCDA.

a. DGS Executive Offices

Brent Jamison, Deputy Director, Interagency Support Division, DGS, stated the CCDA moved under the DGS in 2017, which has been a mutually beneficial relationship. He stated one of his primary roles is to ensure that the CCDA gets the resources and support that it needs to perform its mission and duties.

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b. DGS Office of Legal Services

Jennifer Bollinger, Chief Counsel and Deputy Director, Office of Legal Services, DGS, stated her team provides legal assistance to Deputy Director Jamison and the CCDA.

6. Subcommittee Commissioner Reports – Update and Discussion

a. Legislative Committee

Commissioner Paravagna, Chair of the Legislative Committee, stated the Committee developed the California Commission on Disability Access Informational Sheet, which was included in the meeting materials. This one-page information sheet can be used to introduce the Commission to the members of the Legislature and elsewhere. It is meant to replace the coffee meetings held at the Capital prior to the COVID-19 pandemic. He stated the Committee recommends that the Commission adopt this document for use in trainings and introductions and to post it on the website.

Commissioner Paravagna stated the Committee has been looking at Administrative Order 17-02, which defines the DGS's role in interacting with the Legislature. It mentions the CCDA and its ability to discuss Commission business with members of the Commission who are also members of the Legislature. The Committee is seeking clarification in how this relates to the role of the Commission as defined in the one-page information sheet.

Commissioner Paravagna stated, once this is clarified, the Committee will discuss whether or not the Commission is receiving all the data it should from pending litigation around the state concerning physical access complaints. He stated the need to ensure that the Commission is getting all the data so it can accurately be reported to the Legislature.

Commissioner Paravagna asked the Commission to review the one-page information sheet for possible approval.

Motion: Commissioner Holloway moved to approve the California Commission on Disability Access Informational Sheet as presented. Vice Chair Wiele seconded. Motion carried unanimously with no abstentions.

b. Education and Outreach Committee

Commissioner ElHessen, Chair of the Education and Outreach (E&O) Committee, stated the Committee has directed staff to work on invitations to business associations and chambers of commerce in an effort to gain new members and partners representing businesses.

Commissioner ElHessen stated staff has submitted a review of the compliance of outdoor operations and promotion of the Open-Air Dining and Curbside Pickup Disability Access Considerations document.

Commissioner ElHessen stated staff is drafting a letter to city offices to request that educational tools be made available to businesses during the licensing process. A sample letter was included in the meeting materials.

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c. Checklist Committee

Commissioner Holloway, Chair of the Checklist Committee, stated the Committee has completed updating the Accessibility Construction Inspection Checklist and reviewed proposed changes made to the Open-air Dining and Curbside Pickup Disability Access Considerations document.

Commissioner Holloway stated the Committee continues to discuss the Accessible Parking Campaign. The CCDA hired William Herald, a licensed Architect and Contractor, Certified Assess Specialist (CASP), and LEED AP legacy, as a consultant to help with the Accessible Parking Campaign.

Questions and Discussion

Commissioner Clair noted that the parking campaign should cover both parking and electric vehicle charging.

Public Comment

Michael Jamnetski, Legislative Division Chief, Contractor's State License Board, stated their division is available to assist the Checklist Committee as it relates to the Accessible Parking Campaign.

Action Items

- No action items.

7. CCDA Executive Director Report – Update and Discussion

Executive Director Jemmott presented her report:

a. Administrative and Operational

- Due to the work of the Department of Finance and the DGS, the CCDA has been granted access to revenues that have been collected over the years for litigant court fees that was granted in law in 2015. A total of over \$99,000 was in the CCDA's revenue stream, gathered since 2015. This amount will not reduce the regular budget but will add to the CCDA's revenue.
- Staff has been doing telework throughout the COVID-19 pandemic and continues the rotational telework method.
- The updated website looks amazing and contains great information and marketing communications.

b. Partnerships

- Staff is working with the Governor's Office of Business and Economic Development (GO-Biz) Small Business Advocate Program.
- Staff was invited to participate in the California Bar Association Annual Retreat to highlight the work of the CCDA.

Questions and Discussion

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Commissioner ElHessen asked if the CCDA has a LinkedIn account.

Executive Director Jemmott stated the CCDA uses the DGS LinkedIn account for outreach events. She stated she would verify if the CCDA can be located on LinkedIn on its own.

Action Items

- Staff is to verify if the CCDA can be located on LinkedIn on its own.

8. Financial Review – Update and Discussion

a. Review Summary

Staff Member McPhaul reviewed the 3rd Quarter Budget Highlights document, which was included in the meeting materials.

Commissioners asked clarifying questions.

Action Items

- No action items.

9. CCDA Portal Overview – Update and Discussion

a. Historic Data Entry Project

Staff Member Brown provided an overview of the background, manual collection of legal case filing and resolution data, the DGS Electronic Management Database System, and the CCDA Legal Portal Database. She stated the process of transitioning all historical files from 2012 through 2018 into the Legal Portal will take approximately one year to complete. She noted that legal submission rates have increased due to trainings and sending template letters to the legal community.

Executive Director Jemmott noted that public inquiries have increased asking for records and information. She stated staff is working diligently to transition the historical files to the Legal Portal but much work remains. A database consultant has been secured to help with this effort. Once the historical records are placed into the Legal Portal Database, it will save time in creating the Annual Report to the Legislature and will help answer questions from the public.

Action Items

- No action items.

10. CCDA Strategic Goal – Update and Discussion

a. 2021 Goal: Data Collection Project

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Staff Member Brown reviewed the 2021 Strategic Goal document, which was included in the meeting materials, and current work being done to study the compliance effort of the legal community within the state of California.

Action Items

- No action items.

Lunch Break

[Note: Agenda Item 11 was taken out of order and was heard after Agenda Item 12.]

11. How CASps Are Used to Benefit Access for All – Update and Discussion

- **Courts**
- **Lease Agreements**
- **And Beyond**

Executive Director Jemmott introduced the speakers for this agenda item and asked them to give their presentations.

Bassam Altwal

Bassam Altwal, Certified Access Specialist (CASp), Principle, Cal Accessibility, provided an overview of how CASps are used within the legal system. He noted that the best defense against a lawsuit is to be in compliance.

Questions and Discussion

Commissioner ElHessen asked about landlords who lease to medical facilities that are not accessible and if liability is on the landlord or tenant.

Mr. Altwal stated lease language is negotiated and varies. Typically, liability is placed on the tenant. The tenant should conduct a CASp inspection prior to leasing or occupying a location. He noted the importance of asking the CASp to return and certify completed projects.

Commissioner ElHessen asked who is responsible for parking in medical facilities.

Mr. Altwal stated it depends on the language on the lease.

Commissioner Clair stated, according to Vehicle Code 22511.85, a person with a disability can legally park in two spaces in order to create an accessible stall without penalty. She agreed with Mr. Altwal that responsibility is delineated in the lease agreement; however, under the Americans with Disabilities Act (ADA), both the landlord and tenant are responsible to provide access.

Chair Downey asked about lease language advising potential tenants to have a CASp inspection report done to be used as part of the lease negotiations. He asked how to strengthen the lease language to benefit both the landlord and the tenant.

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Mr. Altwal stated the Mandatory Entrance Inspection ordinance in San Francisco required all commercial properties to inspect their entrances and sidewalks as part of a plan to help avoid lawsuits. He suggested that landlords take responsibility for the exterior of the building and that the lease includes a mandatory section when transferred that the landlord should obtain a CASp inspection.

Chair Downey asked if commercial brokers are aware of the benefits of pursuing CASp reports for their properties as part of lease negotiations.

Mr. Altwal stated he gives lectures to commercial brokers. Most of them understand and push their clients to obtain a CASp inspection but often landlords do not want to incur the expense.

Commissioner Lillibridge asked about agencies that subsidize CASp inspections.

Mr. Altwal stated the city of San Francisco brought in a third party to facilitate grants for CASp inspections several years ago.

Commissioner Clair added that the California Capital Access Program (CalCAP) provides low-cost loans to individuals seeking to improve the compliance of their facility. A CASp report is included in this loan. This is a highly underutilized service. She also stated the Division of the State Architect (DSA) offers CASp 101 trainings three times per year on the CASp program, disability access history, and compliance. She offered that Commissioners can take the course for free.

Commissioners Dillard and Leon-Vazquez requested to take the DSA CASp 101 course.

Public Comment

Shannon Mulhall, CASp, ADA Coordinator, city of Fresno, stated the city of Fresno has the Accessible Fresno Program, which provides free access inspections for small businesses, but businesses do not always take advantage of this free opportunity.

Shannon Mulhall stated the GO-Biz Business Quick-Start Guides do not mention getting access inspection reports, accessibility regulations, or the responsibility for Title III entities to do readily-achievable barrier removal. This is an opportunity for the CCDA to partner with and educate those who are providing guidance to individuals who are guiding businesses. She stated the need to integrate this information into the start-up information given to businesses.

Executive Director Jemmott reviewed the Case Resolution Report Responses document for years 2018 through 2020, which was included in the meeting materials.

David Brandenburger

David Brandenburger, Commercial Real Estate Broker, Newmark Real Estate Services, provided an overview of the background of his organization and lease agreements. He gave two specific examples of accessibility lease negotiations seen on both ends of the spectrum – the state of California and tenants who do not care as much and are comfortable in many environments. He noted that the state of California makes it prohibitively expensive for building owners to work with the state.

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Questions and Discussion

Commissioner Holloway asked about tenants who were significantly affected either by a tenant complaint about an ADA issue or what has been called “drive-by litigations.”

Mr. Brandenburger stated there have been concerns in the past regarding drive-by litigations, although they have not been as pervasive during the past five years. He stated he has seen more examples of the benefits of accessibility being implemented than the complaints that it is not being implemented.

Commissioner Paravagna asked for suggestions on how the Commission can make a positive impact with this issue.

Mr. Brandenburger suggested the two-prong approach of fines and education on how this can benefit businesses.

Mr. Altwal stated there is no such thing as a Grandfather Rule in accessibility. The obligation is always to remove barriers.

Chair Downey asked if landlords and tenants are proactively advised of programs that can make accessibility compliance more feasible.

Mr. Brandenburger stated he has not heard of this but he will ask his colleagues.

Chair Downey asked if there is a single portal or place to go if the Commission compiles this information to make it readily available to commercial brokers.

Mr. Brandenburger stated there is not a single portal but there are avenues to spread the word, such as certain law firms or the California Association of Realtors.

Vice Chair Wiele agreed and added another way to disseminate information is through groups such as the Building Owners and Managers Association, National Association of Industrial and Office Parks, International Council of Shopping Centers, California Business Properties, and others. California Business Properties is already active in this. He stated the need for the Commission to be more aggressive in getting information to trade associations.

Executive Director Jemmott asked if there is less resistance or misunderstanding about CASp inspections on leases.

Mr. Brandenburger stated any regional or institutional landlord or tenant in the Sacramento Region is familiar with CASp inspections and understands the difference between buildings that have or have not passed inspection.

Vice Chair Wiele agreed and stated it is mostly the nonprofessional amateur owners and small independent merchants, many of whom are not represented by brokers and are undercapitalized, who need to be helped and focused on. It is difficult because these are also the individuals who cannot be reached by information dissemination through the above-mentioned organizations.

Chair Downey stated the need to connect these individuals to state agencies such as GO-Biz that can help new mom-and-pop start-ups as they start to form their business plans prior to looking at a lease. It is important to get this information on the table early

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on in conversations to help minimize the sense of being overwhelmed when it comes to signing a lease.

Chair Downey stated the Commission can work to increase awareness but also to highlight tools to make it easier for business owners to do the right thing.

Action Items

- No action items.

12. Legislative Bill Tracking – Update and Discussion

Corrina Roy, Legislative Consultant, Office of Administrative Affairs, Department of General Services (DGS), summarized the CCDA Legislative Status Report on the bills staff is tracking, which was included in the meeting packet.

a. Assembly Bill 29: State Bodies: Meetings

This bill is now a two-year bill and will not be moving forward in 2021.

b. Assembly Bill 105: The Upward Mobility Act of 2021: Boards and Commissions: Civil Service: Examination: Classifications

This bill is awaiting hearing in the Senate Appropriations Committee.

c. Assembly Bill 580: Emergency Services: Vulnerable Populations

This bill is awaiting hearing in the Senate Appropriations Committee.

d. Assembly Bill 1429: State Agency Records: Management Coordinator Duties: Personnel Training

This bill is awaiting hearing in the Senate Appropriations Committee.

e. Assembly Bill 1291: State Bodies: Open Meetings

This bill has been passed and chaptered. It will go into effect on January 1, 2022.

Action Items

- No action items.

13. Future Agenda Items

Commissioner ElHessen asked to address the concerns of the many public constituents who spoke about access to board meetings, school districts, and litigation issues around special education.

Commissioner Lillibridge stated, in order for the CASp program to benefit the non-professional class of tenant, it may be helpful to have a presentation from the Small Business Association or others who help to counsel new inexperienced business owners to see if it is part of their protocols to help inform them about this potential high price item prior to signing a lease.

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14. Adjourn

Chair Downey stated the next full Commission meeting is scheduled for October 27, 2021.

Motion: Chair Downey moved to adjourn the July 28, 2021, California Commission on Disability Access Full Commission meeting.

Commissioner Lillibridge seconded. Motion carried unanimously.

Chair Downey adjourned the meeting at 2:47 p.m.