

**CALIFORNIA COMMISSION ON DISABILITY ACCESS
CHECKLIST COMMITTEE
MEETING MINUTES**

September 26, 2018

1. Call to Order

Executive Director Jemmott welcomed everyone and called the meeting of the Checklist Committee of the California Commission on Disability Access (CCDA) to order at 1:31 p.m. at the CCDA Hearing Room, 400 R Street, Room 300, Third Floor, Sacramento, 95811.

Executive Director Jemmott reviewed the meeting protocols.

Roll Call

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

Commissioners Present:

Brian Holloway, Chair

Committee Members Present:

Afsaneh Ahmadi, Chief Building Official, City of San Diego, and Deputy Director, Building Construction and Safety Division, represented by Mehdi Shadyab, Certified Access Specialist (CAsp), City of San Diego

Taylor Collison, California Hotel and Lodging Association (via teleconference)

Brandon Estes, California Building Standards Commission (CBSC)

Richard Halloran, CAsp, Retired Senior Building Inspector and Manager, Technical Services Division, ADA Coordinator, City and County of San Francisco

Gary Layman, California Building Officials (CALBO), Standing Director of the Professional Practice Standards at the Certified Access Specialist Institute (CASI), Chief Building Official/ADA Coordinator, City of Oroville (via teleconference)

Irene Walela, Deputy Director, California Department of Rehabilitation (DOR), represented by Pia Basudev, DOR

Debbie Wong, Department of General Services - Division of the State Architect (DSA)

William Zellmer, President, CASI (via teleconference)

Committee Members Absent:

Commissioner Scott Lillibridge

Stoyan Bumbalov

Erika Frank

Anthony Goldsmith

Matthew Sutton

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

Staff Present:

Angela Jemmott, Executive Director
LaCandice Ochoa, Operations Manager

Also Present:

Bassam Altwal, CalAccessibility (via teleconference)
Terry McLean, Certified Access Specialist (CASP), Certified Access Specialist Institute (CASI) (via teleconference)
Ike Nnaji, Ph.D., CASp, Disability Access Specialists, Inc. (via teleconference)
David Peters, California Justice Alliance (via teleconference)

2. Approval of Meeting Minutes (June 27, 2018) – Action

Motion: Committee Member Shadyab moved to approve the June 27, 2018, California Commission on Disability Access Checklist Committee Meeting Minutes as presented. Committee Member Halloran seconded. Motion carried unanimously.

3. Comments from the Public on Issues Not on This Agenda

No members of the public addressed the Committee.

4. Consumer Toolkit for the Restaurant Industry - Update and Discussion

a. Overview of Subcommittee Assignments and Content Development

Executive Director Jemmott reviewed the Restaurant Industry Toolkit Subcommittee Assignments document, which was included in the meeting packet. She thanked everyone for their work in putting this toolkit together. She noted that it is a groundbreaking service to the community.

b. Review of Toolkit by Section

Executive Director Jemmott reviewed the California Consumer Toolkit for the Restaurant Industry document, which was included in the meeting packet. She asked Committee Members and members of the public for input on the document. Comments and suggestions are listed below per section:

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

i. Overview/Definition of the Challenges

Committee Member Halloran referred to the photograph on the How to Use This Toolkit page and asked the Commission to be prepared to get comments on where the 60-inch lowered section of countertop is. A Committee Member pointed out the lower section is at the far end of the counter in the photograph.

Committee Member Halloran noted that it looks like there is equipment and glassware stored on the counter above the lowered section, which will be commented on. Executive Director Jemmott stated those items look closer to that section of the counter than they really are due to the angle of the photo. Staff will choose another photo from among the over 100 possible photos to use in the toolkit.

A Committee Member stated the two tables on the cover of the toolkit are also not compliant.

Committee Member Halloran stated many individuals think the ADA is a building code and do not understand that it is a civil rights law. He suggested highlighting "is a civil rights law" in the first sentence under the Americans with Disabilities Act of 1980 in the General Overview of Disability Access Laws section.

Committee Member Wong referred to the fourth paragraph under the Americans with Disabilities Act of 1980 in the General Overview of Disability Access Laws section and stated "all new construction, modifications or alterations completed after 1992" should be 1993.

Committee Member Halloran agreed that new buildings are required to comply after January 26, 1993, but stated that alterations were required to be compliant after January 26, 1992. He suggested "all new construction completed after 1993 and modifications or alterations completed after 1992 must be fully compliant with the ADA."

A Committee Member suggested removing the word "fully."

A Committee Member suggested "all new construction completed after 1993 shall be fully compliant. Modifications or alterations completed after 1992 and existing facilities must be evaluated continuously to ensure readily achievable barrier removal is completed."

A Committee Member stated the CAsp should make the determination about 1992 or 1993, not the business owner.

Committee Member Halloran stated the concern that individuals may think that "existing facilities" refers to buildings built ten years ago.

Mr. Altwal stated the ADA is a continuous obligation - this might resolve the issue.

Executive Director Jemmott stated the importance of teaching business owners to understand that they are building within that time period.

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

Committee Member Wong referred to the second paragraph under the Unruh Civil Rights Act in the General Overview of Disability Access Laws section and stated "after the ADA was passed in 1992" should be 1990. Also, the end of that sentence should read "also constituted a violation of the California Unruh Civil Rights Act and the California Disabled Persons Act."

Committee Members collectively determined to change the last paragraph under the Unruh Civil Rights Act in the General Overview of Disability Access Laws section from "allows the plaintiff to claim damages up to \$4,000 for every violation instance" to "allows the plaintiff to claim damages."

A Committee Member suggested including that the Unruh Civil Rights Act is a California act and not a federal act.

Committee Member Estes referred to the Challenges Within our Community section and stated the case studies would help business owners put themselves in the position of someone who may be involved in litigation. He suggested as a general order of the toolkit to go from the Executive Director's Message to the General Overview laws, and then the case studies and solutions. He suggested three case studies and perhaps adding a sample of a parking case study.

Committee Member Halloran suggested adding "and hundreds of others" so the readers will not think there are only three lawsuits.

Committee Member Wong referred to the second paragraph under the California Disabled Persons Act section and suggested removing the specified dollar amount in that sentence.

A Committee Member stated the California Building Code is revised every 18 months, not every three years. She referred to the phrase "codifies the architectural requirements of the ADA" and stated it could be better worded because the ADA is used as the model code. She also suggested omitting the word "structural" in front of "accessibility requirements of the CBC" or choosing a different word.

Committee Member Halloran agreed that that language is confusing. He stated it also implies that business must be compliant with the current CBC, which is not correct. He suggested "must also be compliant with the applicable accessibility requirements of the CBC."

Committee Member Estes offered to draft language for this section and send it to staff.

Committee Member Wong stated Senate Bill 1608 was passed in 2008, not 2009, and did not create the CASp program. The CASp program was established by SB 262 of 2003 by Senator Kuel. She offered to draft language for this section and send it to staff.

Ms. McLean suggested including the date published on each version of the toolkit.

Committee Member Estes suggested including that, if found liable, the defendant could be held accountable or responsible for attorney's fees.

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

A Committee Member stated that is a good point. If the toolkit talks about damages, it will need to discuss lawyers' fees and injunctive relief throughout the document.

Mr. Altwal referred to the last sentence in the Defending Against a Title III Accessibility Claim section and stated this might lead to misunderstanding. If individuals read they may not have to pay any money, they may think they do not have to do anything. He suggested adding to immediately hire a CASp.

Executive Director Jemmott stated there is another section on CASps. She suggested including a sentence to please refer to the CASp section to understand the next steps after receiving a pre-litigation letter.

Committee Member Wong referred to the Commercial Tenant(s) section and suggested that it read Commercial Property Tenant(s).

Executive Director Jemmott suggested striking the word "commercial" so the section title will be "Tenant(s)" and the first sentence will read "if you are a tenant."

Committee Member Wong referred to the first sentence in the AB 2093 section and stated only the first part of the sentence applies to AB 2093. She suggested changing the end of the sentence from "state whether the property has been determined by a CASp to meet all applicable construction-related accessibility standards" to "state whether or not the property has been inspected by a CASp." She stated the last part of the first sentence and the rest of the first paragraph is required by CIV1938 in 2017. CIV1938 requires that the property owner provide any CASp reports to the prospective tenant so they can make an informed decision.

Ms. McLean suggested using the Civil Code sections instead of statutory names.

Mr. Altwal suggested highlighting the last paragraph that begins "you may want to refer to your lease agreement and consult with an attorney..."

A Committee Member suggesting adding that AB 1148 states that the onus of correcting violations noted on the CASp report is placed on the owner, unless it is mutually agreed upon by the owner and tenant. It is important that the tenant reads the agreement.

Committee Member Wong referred to the 2017 Top 10 Alleged Violations (Overall) chart and suggested clarifying the term "overall" such as to make it "overall businesses."

A Committee Member suggested "overall occupancies."

A Committee Member asked what "overall" encompasses.

Executive Director Jemmott stated "overall" means all businesses. She stated this first chart is for all businesses and the second chart, 2017 Top 10 Alleged Violations (Establishments Serving Food or Drink), is for restaurant businesses.

Executive Director Jemmott suggested switching the order of the two charts.

Committee Member Wong suggested putting the overall and then the business and moving the photo of the tables.

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

ii. Solutions for Your Business

Committee Member Wong stated Certified Access Specialist is not always capitalized in the toolkit document. She referred to the first sentence under the What is a CASp section and suggested striking the words "voluntarily" and "and experience" and changing the last of the sentence to "if buildings are compliant and applicable state and federal..." She stated she will rework this paragraph and send her draft to staff.

Committee Member Halloran asked to change the font and contrast on the CASp Success Story section for improved visibility.

Mr. Altwal suggested asking the persons photographed for the toolkit to sign a release for the use of their photograph.

Committee Member Wong referred to the last sentence in the Think Barrier Removal item under the Buyer Beware section and suggested changing the language from "there is a high likelihood" to "where there is an alteration, you shall comply with the current accessibility standards."

Committee Member Halloran stated the focus of the points under the Buyer Beware section should be on the legal requirement that goods and services be made accessible to individuals, not necessarily a building.

A Committee Member referred to the Think Barrier Removal item under the Buyer Beware section and stated barrier removal is only addressed by the ADA.

A Committee Member stated the number one issue is parking. He asked why accessible parking is not addressed in the Buyer Beware section.

Executive Director Jemmott suggested adding parking to the Think Barrier Removal item to read "remember, parking has been the number one violation for most businesses."

Chair Holloway suggested putting parking in the Ask the Landlord item.

A Committee Member referred to the Think Barrier Removal item and suggested beginning the text "if there are elements that are not accessible, you may be required to perform accessibility upgrades" instead of asking specific questions.

A Committee Member suggested adding "or purchase" to the title of the section so it would read "Buyer Beware: Before you lease or purchase, know these six..."

A Committee Member suggested added "or my facility is grandfathered in" to the Myth item.

A Committee Member referred to the Budget item under the Buyer Beware section and suggested adding "at least" to the language so it would read "be prepared to spend at least 20 percent."

**California Commission on Disability Access
Checklist Committee
September 26, 2018, Meeting Minutes**

Committee Member Halloran suggested staying away from percentages and adjusted construction costs and suggested "if you are performing an alteration, there will be requirements to do accessibility upgrades that could be extensive or expensive."

Chair Holloway stated he, as a business owner, would be comforted by reading the approximate percentage for upgrades.

iii. Voice of the Customer

iv. References and Resources

Executive Director Jemmott asked Committee Members to review the rest of the toolkit document and send comments and suggestions to staff. She also asked for suggestions and samples of good photographs or illustrations of accessible restaurant locations.

Chair Holloway suggested including photos or diagrams contrasting bad versus good examples of accessibility.

Mr. Altwal stated including graphics is beneficial.

A Committee Member suggested adding the link to the Restaurant Association under the Links to Legal Resources and Advocacy section.

c. Presentation Format of Toolkit during Outreach Events

This item was not discussed.

5. Future Agenda Items

No future agenda items were offered.

6. Adjourn

There being no further business, the meeting was adjourned at approximately 3:30 p.m.