

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

October 31, 2011

1. CALL TO ORDER

Chair Luehrs called the meeting to order at 10:00 a.m. at DSA Los Angeles Regional Office, 700 North Alameda Street, 5th Floor, Los Angeles, CA 90012.

ROLL CALL

Angela Jemmott called the roll via teleconference.

Commissioners Present: Richard Luehrs, Chair
Betty Wilson
Michael Nearman

Commissioners Absent: Mitchell Pomerantz

Also Present: David Peters (Teleconference)
Dan Kaiser (Teleconference)

Ms. Jemmott stated that a quorum was present.

2. APPROVAL OF MEETING MINUTES (MARCH 10, 2010, APRIL 12, 2010, AND MAY 26, 2010)

MOTION: Commissioner Wilson moved to approve the meeting minutes of March 10, 2010, April 12, 2010, and May 26, 2010. Mr. Nearman seconded. Motion carried unanimously.

2. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

There were no comments from the public on issues not on this agenda.

3. GENERAL BUSINESS ITEMS

a. Review and Discussion of Checklist Format

Chair Luehrs asked Mr. Nearman of the California Building Standards Commission (BSC) to discuss possible formats for the checklist. Mr. Nearman stated that the checklist will be comprehensive and divided into sections focusing on accessibility provisions for any kind of structure – brand new or existing. The sections can be easily extracted and used independently.

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Business owners, business operators, and building officials would all use the checklist.

The first priority will be to follow the legislative directive, and that deals additionally with building departments and Certified Access Specialist Program (CASp) members.

Mr. Nearman had seen an accessibility checklist from Albany, New York that deals with provisions of the Americans with Disabilities Act (ADA). He had also seen a draft checklist in development by the Division of the State Architect (DSA), and one from the Housing and Community Development Agency for Chapter 11A. Executive Director Vitale had sent a comprehensive checklist that is an ADA standards guide from the Building Owners and Managers Association (BOMA) International. Other checklists are much more abridged – in actual checklist format as opposed to a guide.

Executive Director Vitale provided input at that point: this checklist is actually a two-headed beast.

1. There is the preparation of a review checklist that business owners can look at and to some degree, self-evaluate without getting into the complexities of the code. The use of apps on iPhones would allow the CCDA to circulate a 10-step app allowing us to expand in quantities of ten specifics.

For example, the parking app would first bring up a graphic of an improper parking condition with solutions given. Because it is done graphically, it doesn't require knowledge of English to be understood – important with the broad number of languages spoken at businesses in California. We can clearly explain the information to the business owners, who can self-determine whether they need to go to a consultant to resolve the barrier situation.

2. In order to have consistency in the inspections being done by the city and county building departments and the CASps working for them, the building departments need to be using the same template. The template covers all of the issues that come up in a court of law; it is a defensible document.

Executive Director Vitale reported that BOMA is willing to cooperate with the State of California to modify its checklist with California references alongside the ADA references.

He had spoken with the International Code Council (ICC), which is in discussions with the Department of Justice (DOJ) trying to find out how to get the ICC code to the safe harbor. The problem they are encountering is that DOJ is short-handed and doesn't have the budget for the work. Five or six states are certified already, and they are the ones that get an opportunity to recertify when the new ICC code comes out. The rest of the states have to wait in line.

The difficulty we face is that if we are able to get the checklist out by mid-next year, the code for 2013 still isn't in place. The question then becomes, do we go ahead and put the checklist out as an emergency document in order to give them something to start with, or do we hold off until the 2013 code is in place and accepted?

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Either way, we must have a detailed checklist for the building departments and a less detailed checklist, simple in form, for the business community.

b. Development of the Accessibility Checklist

Executive Director Vitale stated that we have indications that there are nonprofits who are willing to help with this app. The State of Utah has gone 100% mobile with all of their checklists and building department provisions. They are available on any platform and are completely transparent. This model has expedited the turnaround time in Utah from days to hours in terms of an inspector in the field finding needed answers, then sharing them with the contractor there on the spot.

Mr. Nearman noted that DSA is planning in the next cycle (which will be starting mid-year next year and will become part of the 2013 addition effective in January 2014) to rewrite Chapter 11B. The format will be new. DSA is looking towards the ADA to follow that format as a possible direction; it will be similar to the BOMA set-up and the New York checklist as far as the ADA standards.

Then, BSC wants to set up the Checklist in such a format that once DSA comes out with the initial proposal for the 11B rewrite, BSC can take that rewrite and compare it to the existing Checklist, and modify it to align with that format.

Executive Director Vitale stated that the original 1991 BOMA checklist uses a simple graphic and a simple yes or no question: does it comply or not? That format works effectively. But there is the legal question: to what level of detail do we go to ensure business owners that their Certificate of Occupancy will be accepted by the courts in the event of an access suit?

The Unruh Civil Rights Act can be both a positive and a negative in this situation. Can any of its language be adjusted, or can there be a comprehensive rework in which subject to review and approval of a building department inspection, rights can be waived regarding the claim of barriers being in place after the fact?

In response to a question from Chair Luehrs, Executive Director Vitale said that the updated BOMA list is exhaustive in its completeness. It is available electronically but not in written form; it will be an adjustment for some people to deal with an electronic rather than a paper document.

Chair Luehrs stated that the Access Committee is very delinquent with the Checklist: the legislative requirement was that on July 1 of last year a comprehensive version was to have been posted on the CCDA website. Chair Luehrs asked if there were something that the Access Committee could post at this point.

Executive Director Vitale replied that given the Building Code changes, the question was whether to do the Checklist reflecting the current 2010 code and then adjust it for 2012, or to work with the BSC looking at their present direction for 2012 based upon the ADA Guidelines, and produce a checklist that incorporates them as an interim version.

Executive Director Vitale went on to say that if the Access Committee uses the BOMA and supplements it with the CDC, it would be concurrent with the 2010 release of the

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Guidelines. However, we need to format it. That will take time – putting the information into a template and releasing it could be done in three months in the best possible circumstance. The only resources Executive Director Vitale has are his two staff and the budget monies for this fiscal year. He would need to do a man hour estimate. In addition, there were the couple of nonprofits that have indicated a willingness to provide support.

Executive Director Vitale stated that in making the Checklist a required deliverable, the legislators lacked a complete and clear understanding of outside influences that would impact the ability to deliver it, including getting a buy-in from the building officials in California.

He has six departments that are enthusiastic about beta testing the checklist immediately. If it could ensure statewide consistency for all of the building departments in the state, CCDA would set a model for the country to follow.

Chair Luehrs asked how to make this work. Executive Director Vitale replied that the CCDA Chair needs to be involved. The Executive Committee meets on November 17, and the checklist needs to be added to the Agenda. The Access Checklist Committee needs to come up with a proposal for the Executive Committee to authorize; then we can proceed.

Executive Director Vitale recognized the lateness of the deliverable, which had transpired before his appointment as Executive Director. He felt that the tools are out there and available, and we can move ahead. We can recapture some of the time loss, and report to the Legislature in January that we have made maximum use of the three months available and are prepared to release the document. He will also be meeting with Senator Corbett's Chief Aide on Tuesday, November 1.

Executive Director Vitale stated that the action to take would be to ask the Executive Committee to recognize that two documents need to be created: one for use by building officials and one for use by the business community.

Commissioner Wilson noted that we need to have a proposal – we need to come up with recommendations for getting the document done. We need to include the disclaimer that it is a living document subject to change.

For the proposal, Executive Director Vitale elaborated on the two documents. The building department checklist will be used as a standard by all jurisdictional agencies, city and county, in California. It will establish and verify a standard of care and completeness for access inspections that will assist in warranting that the Certificate of Occupancy received by a permit holder can serve as a safe harbor from Unruh litigation.

Like the building department checklist, the building owner and tenant checklist will be published on the CCDA website and available via electronic download. The checklists will be developed utilizing as a template the BOMA 2011 Guide to ADA Standards, together with a master template that is modifiable with each Building Code year.

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The checklists will be prepared utilizing CCDA staff and additional resources to be determined. The anticipated date of publication is June 2012, assuming that is acceptable to Senator Corbett and others.

Chair Luehrs ascertained that Executive Director Vitale would come up with a timeline for putting the checklists together, to be provided at the Executive Committee meeting.

A member of the public, Dan Kaiser, voiced concern that the product needs a series of public comment periods before it should be tested. He felt that product development should be included in the timeframe.

Executive Director Vitale responded that the checklist complied with the individual components of the Building Code together with the ADA Standards. There is no room for any other modifications other than the format in which it is delivered. The public cannot comment on something that is law.

Mr. Kaiser preferred for the checklist to be put on the website to be made available for everyone to make comments. The Access Committee's job is to review the comments for validity, incorporate them (or not) into the final checklist, and then test it.

Chair Luehrs stated that because of the sheer volume of issues to be addressed, the document is going to be a living document with comments and changes continuing for years. He offered to share the document with Mr. Kaiser and any contacts he has for review and input.

Chair Luehrs asked about the BOMA template. Executive Director Vitale responded that he had sent it to the Checklist Committee as a pdf file, and that it is a licensed copyright document that BOMA is permitting the Commissioners to use; distribution is only to the Commission.

Executive Director Vitale noted that he had also sent two templates from the state of Illinois and the state of Texas. He suggested that the Committee members look at those templates in terms of the formatting, which is different from the BOMA document. The BOMA document is comprehensive, much like the DSA checklist used for schools. The CCDA checklist is intended to be a field inspection checklist.

Mr. Nearman added that in the New York checklist, they have provided an additional indicator where the person doing the review can go through and determine whether or not New York's provisions are more restrictive than the ADA, and they are complying with those. In California, we have Title 24 and the requirements within the 11B for commercial accessibility; these also go beyond what the ADA requires.

4. FUTURE CHECKLIST COMMITTEE MEETINGS

Commissioner Wilson offered her office for the next meeting.

Ms. Jemmott recommended setting up a full year's schedule of tentative dates.

Chair Luehrs commented that once the Committee gets a checklist up and distributed, they will need to meet possibly on a quarterly basis to check its viability and assimilate

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comments from the public. However, this Committee is not an ongoing Committee that needs regularly scheduled meetings.

Executive Director Vitale suggested making the issue of Checklist Committee meetings an Agenda item for the Executive Committee. He mentioned stakeholder presentations that the Committee will want to participate in, which would necessitate having meetings in the north and south of the state.

Ms. Jemmott informed the Committee that the January Executive Committee meeting will be in Sacramento. For the quarterly full Commission meetings, the goal is to have the first two in Sacramento and the last two in Los Angeles. Commission Chair Johnson had stated that she didn't want those meetings to be video linked; she wanted all Commissioners present.

5. FUTURE AGENDA ITEMS

There were no future agenda items.

Public Comment

David Peters commented regarding the issue of having the checklist in an electronic format accessible by iPhone or iPad. He remarked that it is important to keep in mind the legal perspective, since much of this came about because of the large number of lawsuits. We need to be sure that whatever the final format is, it can be printed out and provided to a court – something a judge can look at to determine with a fair degree of accuracy and consistency whether a particular condition complied or did not.

Chair Luehrs agreed that the checklist has to be accessible, understandable, and user friendly for all concerned, otherwise it does no good.

Mr. Peters explained that he made the comment because of situations where CASps have reached what appear to be wrong conclusions, based on the example of a height of a counter in compliance with current California law. CASps are giving clients the impression that the counter needs to be lowered, but if it met the standards at the time it was built, with the ADA, it would not need to be lowered.

Mr. Peters suggested an additional step: not only to let people know what California Title 24 says, but also to help them to ascertain whether they need to meet a requirement. Older properties may not if they complied in the year they were built and made any changes that were required by the ADA.

Executive Director Vitale stated that the CASp Education Committee has the responsibility to further clarify, define, quantify, and qualify the roles and responsibilities of CASps. Nuances in the CASp program need to be clarified so that in the future, if someone brings an action against a CASp, there is a standard for what CASps should do in a set of circumstances.

He said that not all CASps can make determinations as to how and by what means a barrier is removed. That is limited to licensed professionals, architects, and engineers. There is much scoping that needs to be done each time a CASp inspection takes place. Fees need to be correctly charged; building owners may seek to accept the lowest

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possible costs without consideration for the completeness or accuracy of the produced report.

Mr. Peters agreed, and remarked that the best goal would be to have a document by which the building owner, the court, the plaintiff, etc. can readily ascertain whether a condition is correct. It is important to be mindful that, along with getting the new construction checklist in place, progress is being made towards discerning whether existing structures need to have changes made.

6. ADJOURN

Chair Luehrs adjourned the meeting at 11:28 a.m.