STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

April 23, 2002

To All California Mayors:

Re: Disabled Access to Public Meetings Under the Ralph M. Brown Act

As Attorney General of the State of California, I have a strong interest in ensuring that the state's disabled access laws and regulations are vigorously enforced. I am particularly concerned that these laws and regulations be enforced so that persons with disabilities have access to public meetings held throughout the state. I am writing to encourage you to inspect your meeting facilities and review your current policies and practices to make certain that local public meetings, which are at the heart of our democratic process, are truly accessible to all citizens of California.

The Ralph M. Brown Act (Brown Act),[1] Government Code section 54950 et seq., ensures that meetings held by local agencies are, subject to certain exceptions, open to the public. Holding public meetings in inaccessible facilities or otherwise making such meetings inaccessible, may prevent persons with disabilities from the opportunity to fully and meaningfully participate in the democratic process. The Brown Act specifically states that "no legislative body of a local agency shall conduct any meeting in any facility which is inaccessible to disabled persons." (Gov. Code, § 54961, subd. (a).)[2] Moreover, all members of the public

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[1] The entire Brown Act is available on the Attorney General's web site at <http://www.caag.state.ca.us>.

[2] Government Code section 54961, subdivision (a), states in part: "No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or *which is inaccessible to disabled persons,* or where members of the public may not be present

including persons with disabilities, have a 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).)

A facility is accessible, for purposes of the Brown Act, if it fully satisfies state and federal accessibility requirements. State accessibility building standards and requirements are set forth in Government Code section 4450 et seq., and California Code of Regulations, Part 2, Title 24.[3] These statutes and regulations mandate that publicly funded buildings and facilities that are constructed (or pre-existing buildings and facilities under certain conditions) be accessible to and usable by persons with disabilities.[4] Privately funded public accommodations must also be accessible. (See Health & Safety Code, § 19955 et seq.)

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without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951." (Emphasis added.) A local agency means a "county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency." (Gov. Code, § 54951.)

[3] Title 24 of the California Code of Regulations is published separately as the California Building Code and is available through the Building Standards Commission at <http://www.bsc.ca.gov>.

[4] Further information on California's access laws and regulations is available in the *State of California Access Compliance Reference Manual*, which may be obtained from the Department of General Services, Division of the State Architect. Its web site is <http://www.dsa.ca.gov>.

The Brown Act does not distinguish between privately owned and publicly owned buildings and facilities. Accordingly, regardless of where a public meeting is held, the facility where the meeting is held must be accessible.

Federal accessibility requirements are set forth primarily in the Americans with Disabilities Act (ADA), Title 42 United States Code, section 12101 et seq., and its implementing regulations. The ADA is a civil rights statute that prohibits discrimination against persons with disabilities. Unlawful discrimination occurs under Title II of the ADA when a facility is constructed (or an existing facility is altered) and it is not accessible and useable by disabled persons.[5] (28 C.F.R. §§ 35.150(a), 35.151(a) (2001); *Schonfeld v. City of Carlsbad* (S.D. Cal. 1997) 978 F.Supp. 1329, 1336-1337.)[6] Furthermore, architectural and communication barriers that are structural must be removed in public places of existing facilities when their removal is readily achievable, in other words, when removal is easily accomplished and able to be carried out without much difficulty or expense. (28 C.F.R. § 36.301 et seq.)[7]

Furthermore, section 54 of the California Civil Code provides that "individuals with disabilities have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, . . . public facilities, and other public places." (Civ. Code, § 54, subd. (a).) A violation of the ADA constitutes a violation of Civil Code section 54, and the Attorney General may bring an action to enjoin practices that are in violation of Civil Code section 54. (Civ. Code, §§ 54, subd. (c), 55.1.)

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[5] Title II of the ADA provides, in pertinent part, as follows: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C.A., § 12132.)

[6] New construction and alterations must comply with either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG). (See 28 C.F.R. § § 35.150-35.151 (2001).) For purposes of meeting the standards of the ADA, facilities constructed prior to 1990 are considered "existing" facilities. *The Americans With Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services* may be obtained from the United States Department of Justice at <http://www.usdoj.gov> (accessed under "Publications & Documents" [within "Reports & Publications"]).

[7] Additional information on barrier removal is available in *The Americans With Disabilities Act Checklist for Readily Achievable Barrier Removal,* which may be obtained from the United States Department of Justice at <http://www.usdoj.gov> (accessed under "Publications & Documents" [within "Reports & Publications"]).

While the ADA and certain state laws[8] require, under certain conditions, local governments to make structural changes to publicly owned facilities, the Brown Act is directed towards the manner in which public meetings are conducted. Penalties for violation of the Brown Act may include injunctive relief to stop future meetings 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, §§ 54960, 54959, and 54960.1.)

Section 54961, subdivision (a), of the Brown Act is an anti-discrimination provision that is intended to ensure all members of the public have a meaningful opportunity to observe and take part in the decision-making process of local governmental bodies. Architectural barriers which exclude disabled persons from full and equal participation constitute a serious form of discrimination. For example, a building where a meeting is being held may have architectural barriers, such as an inaccessible entrance or inaccessible restrooms which prevent persons who use wheelchairs from participating in the meeting. Similarly, notices regarding meetings may not be "accessible" to persons who are visually or hearing impaired and may require you to provide notices in Braille or sign interpreters at a meeting.

Additionally, segregating or failing to reasonably accommodate persons with disabilities with respect to their participation in public meeting is discriminatory. For example, the public has a right to directly address the local governmental agency during public meetings. (Gov. Code, §54954.3, subd. (a).) If the general public is provided a podium and a microphone to address the local agency, persons with disabilities must also have an equivalent means of addressing the local agency.

Reasonable efforts to accommodate persons with disabilities can take the form of altering existing meeting facilities to remove existing barriers or moving meetings to accessible facilities. The duty to accommodate also includes the duty to provide "auxiliary aids and services." (28 C.F.R. § 35.104(1)-(2) (2001).)

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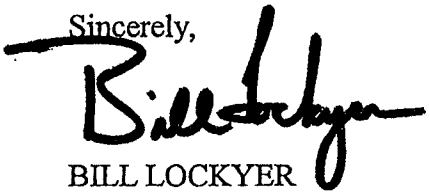
[8] Government Code section 11135 prohibits the denial of full and equal access or discrimination on the basis of disability related to any program or activity that is funded directly by the state or receives any financial assistance from the state. (Gov. Code, § 11135.)

California was a pioneer in mandating that publicly funded buildings and facilities be 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. I urge your jurisdiction to inspect its meeting facilities, review its current policies, services, and practices on respecting disabled access, and conduct a self-evaluation if you have not already done so.[9] Please join me in a renewed commitment to take every action necessary to ensure that public meetings are accessible to all Californians.

Sincerely,



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[9] The ADA self-evaluation requirement imposes an affirmative duty on public entities to conduct the evaluation in conjunction with input from interested persons for the purpose of identifying problems and proceeding to correct them. (*Schonfeld v. City of Carlsbad, supra,* 978 F.Supp. 1329, 1335, fn. 5.)