STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

April 29, 2002

Dear Local Building Official:

Re: Enforcement of California Disabled Access Laws and Regulations

As chief law officer of the State of California, I have a strong interest in seeing that disabled access laws and regulations are uniformly and adequately enforced. (Cal. Const., art. V, § 13.) Local building departments are the first line of enforcement authority for these laws and regulations. (Gov. Code, § 4453, subd. (b); Health & Saf. Code, § 19958.) Regrettably, I have received a number of complaints that allege certain local jurisdictions are failing to take all actions necessary to ensure compliance with these laws and regulations. (Gov. Code, § 4450 et seq; Health & Saf. Code, § 19955 et seq.; and Cal. Code Regs., tit. 24, part 2.[1]) For this reason, I urge you to evaluate your enforcement policies and practices in this area.

While local building officials are the primary enforcers of California access laws and regulations, I have been vested with the authority to investigate complaints and bring legal actions to remedy the violation of these laws and regulations. (Gov. Code, § 4558; Health & Saf. Code, § 19958.5.) This includes investigating allegations that a local building department is not adequately enforcing state access laws and regulations, and filing civil actions to remedy such problems when they are identified.

Consistent with the Legislature's mandate that local building departments be the primary enforcers of state access laws and regulations, I require that a complainant first lodge with the appropriate local building department an access complaint which alleges that a particular facility or

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[1] 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>>. 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>>.

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building is being maintained in violation of state disabled access regulations. I expect every local building department to have a complaint procedure and to investigate these disabled access complaints promptly.

As a general rule, my office will only consider a request to review the action of a local building department on an access complaint to determine whether the agency has abused its discretion if: a) the agency has had a reasonable opportunity to resolve the complaint; and b) has either reached a final resolution or has failed to do so within a reasonable period of time. If we find such an abuse of discretion, we ask the local building department to reconsider its decision, and, if it fails to do so, I am prepared to take legal action to cure that abuse of discretion.

Another area for potential legal action by my office concerns local building departments' responsibilities under Government Code section 4452. That statute requires commencement of action to correct deviations from state disabled access regulations within 90 days of confirmation of the existence of such deviations.

I believe that a reasonable construction of this 90-day requirement is that a final resolution be reached with respect to the confirmed violations within 90 days of confirmation of the violations. A final resolution means that the violations have been corrected, a binding agreement has been reached with the owner to complete any construction necessary to correct the violations within a reasonable time, or the local building department has instituted legal action to compel the owner to correct the violations.[2]

Again, with respect to any agreement reached between a property owner and a local building department, this office will, upon request, review any such agreement for an abuse of discretion and will take legal action, if necessary, to correct any such abuse of discretion.

Through this office's disabled access enforcement work, we have found that deviations from disabled access requirements are often the result of a lack of adequate resources to carefully check plans, inadequate training of personnel and adherence to a philosophy that relaxes enforcement of state disabled access standards. I encourage you to evaluate your enforcement programs to determine whether these are areas that need to be addressed.

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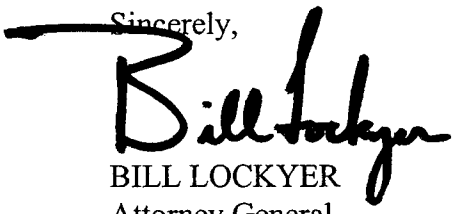
[2] This construction takes into account that not all construction projects that might be necessary to correct certain disabled access regulations can, in reality, be completed (and the access violations corrected) within 90 days of confirmation.

In order to ensure that I have reached the person in your jurisdiction with whom the governing body has placed the responsibility for enforcing state access laws and regulations, I request that you contact Special Assistant Attorney General Alberto L. González of my staff and confirm that you are the correct person or, if not, provide him with the name of that person. Mr. González may be reached at (916) 324-5369, or at his e-mail address alberto.gonzalez@doj.ca.gov.

California was a pioneer in requiring that publicly-funded buildings and facilities and privately funded public accommodations be accessible to persons with disabilities. Our state laws predate the federal Americans With Disabilities Act by over 20 years. Please join me in a renewed commitment to strong and vigorous enforcement of state disabled access laws and regulations.

Sincerely,



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