



Commission on Disability
Meeting Agenda: October 11, 2023, 5pm

North Berkeley Senior Center (Aspen Room)
1901 Hearst Avenue, Berkeley, CA 94709

Preliminary Matters

1. Call to Order by Chair Fischer
2. Land Acknowledgment recognizing Berkeley as the ancestral, unceded home of the Ohlone People
3. Roll Call by Secretary
4. Public Comments
 At this point in the meeting, the public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item. Public comments are limited to three minutes per speaker.
5. Approval of draft minutes: September 13 meeting*
6. Approval: Order of Agenda*

Staff Updates

7. 2023 Log of Access Complaints*
8. Email and voicemail sent to the Commission*

Commissioner Reports/Announcements

9. Chair Fischer: September meeting followup communications**

Presentations

Discussion/Action Items

10. Set meeting calendar for 2024
11. Recruiting new CoD members
 - a. Finalize graphic**
 - b. Email to berkcod.org
12. Work Plan Updates and Development
 - a. Presentations to advance Work Plan priorities

Carried Over & Items for Future Meetings

- a. Civic Center Subcommittee Briefing
- b. Safer pathways map of Berkeley (perhaps produced with CoAging)

Adjournment

- * **Written material included in packet.**
 ** **Written material to be delivered at meeting.**
 *** **Written material previously distributed.**

PUBLIC ACCESS TO AGENDA

Agenda posted: 1) on the bulletin board at Old City Hall (2134 MLK Jr. Way); 2) North Berkeley Senior Center (1901 Hearst Avenue); 3) City of Berkeley website ([link](#))

A complete monthly agenda packet is available for public review by clicking the V symbol to the right of the monthly minutes PDF at <https://berkeleyca.gov/your-government/boards-commissions/commission-disability>. Physical agenda packets are reviewable during business hours at the Berkeley Central Library (2090 Kittredge St.) and at 1947 Center Street, 4th Floor.

ADA ACCOMMODATIONS

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including remote participation, auxiliary aids or services, please contact the **ADA Program Coordinator at (510) 981-6418 (V) or (510) 981-6347 (TDD)** at least 72 hours before the meeting commences. Please refrain from wearing scented products to this meeting.

PUBLIC RECORD INFORMATION

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the commission secretary for further information.

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at 1947 Center Street, 4th Floor, during regular business hours. The Commission Agenda and Minutes may be viewed on the City of Berkeley website: <http://www.cityofberkeley.info/commissions>.

Secretary:

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Mailing Address:

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c/o Thomas Gregory
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Berkeley, CA 94704



Commission on Disability DRAFT Minutes re September 13, 2023 Meeting

Preliminary Matters

1. Call to order at 5:02pm
2. Land acknowledgment read recognizing Berkeley as the ancestral, unceded home of the Ohlone People.
3. Roll Call
Present: Chair Fischer, Commissioner Pugh, and Commissioner Sun.
Absent: Commissioner Lewkowicz.
On a Leave of Absence: Vice-Chair Walsh.
Staff present: Thomas Gregory, Guillermo Campos, and Kenneth Jung (guest presenter).
Public present: April Dawson (guest presenter) and Ginny Kamp.
4. Public Comments: none
5. Approval of draft minutes for August 9, 2023 meeting
“...that we approve minutes for August 9th.”
Moved by: Chair Fischer; seconded by: Commissioner Pugh.
Yeas: unanimous; nays: none.
Motion passes.
6. Approval and Order of Agenda
“...that we approve the agenda order.”
Moved by: Chair Fischer; seconded by: Commissioner Sun.
Yeas: unanimous; nays: none.
Motion passes.

Staff Updates

1. Staff informed Commissioners that Vice-Chair Walsh was on a leave of absence through 12/13/23 and that this would not impact the Commission’s current quorum.
2. Regarding the Log of Access Complaints, there was consensus among Commissioners present that the log (a) should convey all pertinent info in a succinct manner and (b) does not need to include quoted content from correspondence or details of all intermediary actions, but should include a summary of information. The internal Public Works log is too detailed; an edited version will better suit the Commission’s use.

There was also consensus that the log should include both (a) the degree to which the remediation satisfied ADA/legal requirements and (b) the degree to which the remediation satisfied the individual who reported the access issue.

3. Regarding the ADA Program Coordinator's template for courtesy letters to local businesses with reported ADA Title III violations, Chair Fischer objected to the sentence, "You have no obligation to respond to this letter, and the City of Berkeley is not asking you to take any actions." Chair Fischer noted that the letter already indicates the City "has no authority to enforce Title III of the ADA" and that the letter is a "courtesy." She believes that the City "not asking you to take any actions" sends the message that businesses do not need to take action, and works against the letter's intent to have accessibility issues corrected. Commissioners Pugh and Sun concurred.

Presentations

1. Ohlone Greenway Project: presentation by Public Works Project Manager Ken Jung.
The Commission asked that the presentation focus on safety concerns raised in the design and implementation of a shared-use path. The Commissioners strongly believe that the project's 2'-wide shoulders should be paved, except through the grove of trees in Cedar Rose Park, in order to provide 4' of additional, usable space. Commissioners pointed out that unpaved shoulders are unusable for many wheelchairs—and, for some wheelchairs, an area in which to become stuck. Unpaved shoulders are also a tripping hazard for disabled and older pedestrians. Widening the paving, by including (striped) paved shoulders, will result in a safer shared path.

The Commissioners asked that "share the path" signage and other communications designed for shared safety be submitted for Commission feedback while in the development phase.
2. California Commission on Disability Access (CCDA): presentation by CCDA Executive Director April Dawson.
There was consensus among Commissioners present that if/when CCDA and the City were to collaborate on a Berkeley-based event focused on ADA Title III requirements, the Commission would like to play a role in such an event.

Discussion/Action Items

1. Recruiting new CoD members.
Commissioners discussed strategies for recruiting additional qualified candidates.
2. Work Plan Updates and Development.
Commissioners continued to discuss Work Plan objectives and language.

Commissioners adjourned at 7:28 pm.

Minutes Approved by CoD vote on:

Thomas Gregory, Secretary to the Commission on Disability

2023 Log of Access-related Complaints Received by CoB

Subject matter key:

1 = built environment (facilities and their adjacent paths of travel)

2 = built environment (pedestrian rights of way)

3 = digital content

4 = effective communications/signage

5 = programs, services, and activities

Date Complaint Lodged	Lack of Access Pertaining To	Date the City deemed a solution was implemented	Nature of solution	Solution's level of compliance with law	Complainant's level of satisfaction with solution
5/12/23	5 – letter to City Attorney and City Clerk, that City must change accommodations for disabled Commissioners that require publicly posting addresses and opening homes to public; based on the legal opinion of the SF City Attorney that the Brown Act must defer to the ADA, Title II	7/7/23 (or sooner)	N/A as City did not see a need for any solution other than providing reasonable accommodations as needed.	Litigation pending	Unsatisfied

Internal

6/8/23	3 – Commissioners' Manual not fully accessible via screen reader.	not yet	On 6/13/23, the City Clerk wrote: "My office will plan to create a version of the Manual that blacks out the text entirely and works with screen readers."	Once implemented, solution will be compliant.	Yet to be satisfied.
6/8/23	3 – same as above, but with additional concern that much more content on City website could be out of compliance with WCAG.	6/14/23	On 6/14, the City's Digital Communications Coordinator wrote that all City-generated web content meets WCAG standards. Re content on the City's website generated by third parties (e.g., Granicus), the City will insist that these third parties ensure that their content meets WCAG, and specific City staff are responsible for ensuring that these third parties cure any identified instances of non-compliance.	Assuming solution is implemented consistently on an ongoing basis, it is compliant.	Unknown (but likely not very satisfied).
6/16/23	5 – grievance that following Brown Act would defeat the purpose of one's accommodation to teleconference into Commission meetings.	7/3/23	For the City to waive Brown Act requirements, an accommodation dependent upon the submission of medical documentation was offered to complainant.	Litigation pending.	Unsatisfied.

6/23/23	5 – letter from attorney saying that the City has imposed unsafe conditions on accommodations for disabled Commissioners and must allow Brown Act obligations to yield to ADA obligations when the two statutes appear to conflict.	7/7/23	City Attorney's office responded to complainant with letter stating that the City is following the law as the law is understood by the City.	Litigation pending.	Unsatisfied.
7/26/23	5 – no curb cut connecting parking lot with sidewalk adjacent to John Hinkle Park.	not yet	The City's Supervising Civil Engineer has claimed responsibility for performing this remediation. No ETA available yet. Thomas will seek ETA in mid-October. As soon as Thomas has an ETA, he will share with complainant.	Not yet applicable...when a solution is implemented, it will be compliant.	Not yet applicable.
8/28/23	1 – constituent complained that The Stegmann Trail at Cesar Chavez Park is too bumpy and out of compliance.	9/5/23	PRW staff informed complainant of existing plans to render the trail ADA compliant tentatively scheduled to commence in Sep2024.	Not yet applicable, but solution, once implemented, will be compliant.	Satisfied.
9/25/23	5 – constituent complained that the agenda for a City event listed incorrect phone and TTY contact info re	9/26/23	Agenda in question edited to reflect correct contact info and re-sent to distribution group.	Compliant.	Unknown.

	requests for accommodation.				
10/1/23	2 – constituent complained that a Link scooter was blocking sidewalk on Benvenue Ave.	10/1/23	Scooter removed from sidewalk.	Compliant.	Unknown.

The above list does not reflect accommodation requests that were promptly approved and met to the requester's satisfaction.

Auto-transcript of 9/14/23 message (audio available at public meeting):

Hi, Thomas, it's Elizabeth Star. Thank you for your message. I'm at 510-220-4647 you don't need to call back but can you please forward this voicemail to the chairperson of the commission on disability. Hello, chair person Fisher. Thank you very much for reviewing the contents of my email for the only Greenway expansion at the meeting. I look forward to hearing receiving your correspondence via my email. I am still very concerned and hope you will take seriously the grey area of the Americans with disabilities act regarding the expansion of the aloni Greenway have not having a separate tab for people with disabilities is a recipe for disaster. Many people will be injured maimed and even killed in there are many vulnerable people who will be hurt. I have contacted disability rights advocates who tells me who has told me several times that's the way the Americans with disabilities act works with this if there if it is dangerous to not have a separate tab. It is covered by the Americans with disabilities act. I really hope the commission will take the song and stand up for what is what's the right thing and it's really the right thing to do to, not let people be hurt. We don't want don't need and want more people could become disabled and the City of Berkeley doing. Thank you very much against the Americans with disabilities act covers. This. We are legally bound to have a separate path for pedestrians. If there is any chance of danger, which seaward seaborne of D R a tells me there is I look forward to hearing from your correspondence. Thank you. Thank you for passing this on Mr. Gregory and have a good day.

Auto-transcript of 9/14/23 message (audio available at public meeting):

Hello, Thomas can you also pass this on to Jefferson Fisher. This is Elizabeth Star horse chip person Fisher. Besides my comments in my last voicemail about the aloni Greenway 80 Americans with disabilities act danger the level of danger it will put on people cannot have a separate path. I wanted to also ask you to address the information that was given to you from Thomas about the five M G so Tower 50 feet from Cedar Rose Park. The City of Berkeley guidelines, say, they must cell towers must be at least 300 feet away there are people becoming very disabled from five T I am one of them. But there are hundreds of other people in the direct area and the cell Tower at 1321 Gillman was put up illegally. No one was in 500 feet was notified by public works. I would like the commission on disability to take a look at this and it was included in the package. Thank you very much. Thank you for passing this on to chair person Fisher Mr. Gregory and have a good day.

Auto-transcript of 9/15/23 message (audio available at public meeting):

Hi, Thomas, it's Elizabeth please do give that message to the chairperson of the commission on disability. I am concerned that although I'm glad they didn't endorse. It. I'm concerned that is right they and you aren't getting the fax and it really is a D a because it puts people in danger and I know, it's a little gray area of the idea, but if disabled people are put in danger and that's exactly what this will be doing without a separate HOA compliant pass without their pedestrian path and at 88 has you're going to be putting people in danger of being killed and run over all kinds of things and. I have been working trying to work with our counsel person who apparently did speak with Scott Ferris, they looked at it and some some kind of composite patch separate path. Of course, it would have to be a V a but they would have to cut down some red was et cetera. And I did ask her to please go bring it to the city council for funding to get it re designed to get the presents three and 88 compliant path elsewhere going through the park, but she refuses to do it so. You know this looks really bad to me because it is a da Thomas because it's putting people in danger. So, I know I saw that last night is a message please send that to the chair person. I just want to remind her that it is you know, it is a D a because of the danger aspect and yes, she can email any letter to me to the Judy Blue my partner will print it out for me thank you for your help. But I really wish he would you know kind of wake up and and see what you're doing by supporting this without a separate path your be really putting people's lives on the line, not only disabled people, you know, I'm being a good Samaritan here. I don't want people who are walking around and normal like you. I think you are I don't want more non, disabled people to become disabled. It's horrible that more people will be injured and maybe killed because of these electric bikes in scooters going really fast there won't be any safe place for disabled people to be you know, I really wish you would look at that. I think it's very shameful that you're supporting this bad project. Yeah, so that's all I have to say. Thank you. You can send the email from the chair person in my email and I left him message last night for her also about the danger that the da da because of the danger aspect, please make sure she gets it thank you very much and about the five T it would be good if they can talk about that at the next meeting thank you.

Auto-transcript of 9/16/23 message (audio available at public meeting):

Hello, Thomas this is Elizabeth Star. Please give this message to chair person Fisher. Hello chairperson Fisher. I wanted you to know this is Elizabeth Star. I wanted you to know our council person and District want to rush her testimony office her age best gerstein has told us that if people do not feel comfortable going through the and the bike Lane that. They can just simply walk on the grass and that would be the pedestrian and or disabled access the grass at Cedar roads Park and that is completely able West ages and really horrible so we are proposing a pap industry unsafe a D a path hugging the left side of the park. Therefore, it would keep pedestrians and disabled people away from the fast moving bike lanes and they wouldn't have to cut down more trees. I'm hoping that you might support this to be told that everyone old young disabled anyone would have to go that you're only access is to go through the grass and the park is not a viable option and also three months out of the year. The park has a fence up because of the rainy season that would cut that suppose that access I've done it design where there could be an 80 a linear half hugging the west side of the park by all across the Center and circling around to see them. I hope you will endorse it thank you.

Auto-transcript of 9/19/23 message (audio available at public meeting):

Hi, Thomas this is Elizabeth Star calling. I've researched this I read with the city attorney Road as a packet of however, these are not recreational vehicles and these are vehicles people are using for transportation on a pedestrian pass in there for the 88 is covered by this and adding in the impact of the danger. It is definitely covered by the 88 so these are not all recreational. These are vehicles heavy motorized electric bikes and scooters. They have heavy Motors on them the chance. He's the actual bike themselves are very heavy hundreds of pounds. They should only be on the street with the license like a regular vehicle it shouldn't be on a password pedestrians that's the danger and the attic and the danger aspect. It is covered by the 88, please pass that information onto chair person Fisher and here. It goes you can say the steer chair per person Fisher. This is Elizabeth Star regarding the aloni Greenway safety expansion plans. I believe the city attorney is wrong because these are not clearly only recreational vehicles. These are heavy motorized electronic bikes and scooters heavy Motors that I use for transportation and congested and pass, it should only be used on City streets with a license they absolutely should be nowhere where nowhere near a pedestrian adding the impact of danger to that's pedestrians makes it totally covered by the Americans with disabilities act, please reconsider coming out against this publicly. Thank you. He was the Star 510-220-4647.

Auto-transcript of 10/2/23 message (audio available at public meeting):

Hello, Thomas this is Elizabeth Star. Please give this message to chair person Fisher dear chairperson Fisher. I have not heard from you I wanted to alert you that I have contacted disability rights advocates regarding a potential Americans with disabilities act lawsuit. Regarding your roney Greenway due to the danger aspect. I look forward to hearing from you. This will be out the commission on Aging and he hopefully several of the commissions that would be great as a commission on disability came out against it and the road to support us keeping people safe. Thank you Elizabeth Star 510-220-4647.

Ohlone Greenway Project

Mon 10/2/2023 7:10 PM

Dear Ms. Starr,

Thank you for bringing your concerns to the Commission on Disability. I am replying to this email address as it was used in one of your communications to the Commission.

After receiving your email and voicemails on the planned changes to the Ohlone Greenway shared path, the Commission heard a presentation from Project Manager Ken Jung at our September Commission meeting.

We voiced community and commissioner concerns regarding the safety of a shared-use path and discussed the unique challenge that the narrowest part of the Greenway path, through the grove of trees in Cedar-Rose Park, presents.

While we did not recommend against the project or that a separate ADA pathway be constructed, commissioners had concrete ideas that, we believe, will make the shared Greenway safer for everyone.

Most importantly, in order to provide four feet of additional, usable space -- and to avoid a tripping hazard -- the Commission strongly recommended that the projects planned two-foot-wide shoulders be paved. Required by guidelines, the shoulders were previously designed as unpaved. Commissioners pointed out that unpaved shoulders are a tripping hazard for disabled and older pedestrians. In addition, they are unusable for many wheelchairs and, for some wheelchairs, an area in which to become stuck.

This suggestion could increase the paved width of the path, through most of the project, by 20-30%. The Project Manager has confirmed that he is working with the designer to incorporate this idea into the design. Widening the paving, by including striped, paved shoulders, instead of unpaved shoulders, will result in a safer shared path for everyone.

In addition to the above design change, we have asked to look at "share the path" signage and other pathway safety messaging while in the design phase to improve the safety of a shared-use path.

While it is not be the outcome you seek, thank you for bringing this issue to the Commission's attention.

Best,
Rena Fischer
Chair, Commission on Disability

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Policy Committees, Commissions, Task Forces) on religious holidays that incorporate significant work restrictions. City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	2024 Date(s)
Shinto	New Year	1/1/2024 thru 1/3/2024
Hindu	Makar Sankranti	1/14/2024
Cultural	Chinese New Year (Eve, Day, Lantern Festival)	2/9, 2/10, 2/24
Islam	Ramadan (Eve & First Night)	3/10/2024 thru 3/11/2024
Jewish*	Purim	3/23/2024 thru 3/24/2024
Hindu	Holi	3/25/2024
Christian	Good Friday	3/29/2024
Christian	Easter Sunday	3/31/2024
Islam	Eid al-Fitr	4/9/2024 thru 4/12/2024
Jewish	Passover (Nights 1, 2, 7, 8)	4/22 - 4/24 & 4/29 - 4/30
Jewish*	Yom HaShoah	5/5/2024 thru 5/6/2024
Buddhist	Vesak	5/23/2024
Jewish	Shavuot	6/11/2024 thru 6/13/2024
Islam	Eid al-Adha	6/15/2024 thru 6/19/2024
Jewish*	Tish'a B'Av	8/12/2024 thru 8/13/2024
Shinto	Obon Ceremony	8/13/2024 thru 8/15/2024
Jewish	Rosh Hashanah	10/2/2024 thru 10/4/2024
Jewish	Yom Kippur	10/11/2024 thru 10/12/2024
Hindu	Dussehra	10/12/2024
Jewish	Sukkot (1st Day)	10/16 - 10/18 & 10/23
Jewish	Shmini Atzeret/ Simchat Torah	10/23/2024 thru 10/25/2024
Hindu	Diwali	10/31/2024
Baha'i Faith	Birth of Bab	11/1/2024 thru 11/2/2024
Baha'i Faith	Birth of Baja'u'llah	11/2/2024 thru 11/3/2024
Christian	Christmas	12/25/2024
Jewish	Chanukah (1st night)	12/25/2024
Cultural	Kwanzaa	12/26/2024 thru 1/1/2025
Jewish	Shabbat (Friday sunset to Saturday sunset)	Weekly

* No work restriction, but avoid scheduling meetings if possible