



Commission on Disability
AGENDA
Special Meeting

Commission on Disability
Thursday 02/25/2021 6:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE
CONDUCTED EXCLUSIVELY THROUGH ZOOM
VIDEOCONFERENCE AND TELECONFERENCE

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A. PRELIMINARY BUSINESS

- 1) Call to Order by Chair Ghenis
- 2) Roll Call by Secretary
- 3) Public Comment on Items Not on the Agenda. (Up to 3 minutes per speaker)
- 4) Approval of Draft Action Minutes of December 9 2020 *

- 5) Staff Update.
- 6) Approval and Order of Agenda

B. DISCUSSION/ACTION ITEMS

The public may speak at the beginning of any item.
(Comments may be limited to 3 minutes per speaker)

Commission will take a 5 minute break around 8pm

1. Meeting logistics and related concerns.

Clarify that all concerns have been addressed; note if there are any ongoing barriers, and what barriers are; progress as needed. (5 min / Ghenis)

2. BART CAG Appointment (5 min/ Ghenis)

3. Workplan (20 minutes/ Ghenis)*

4. Covid information and web accessibility (5 min/Walsh)

5. Elections

6. Accessible Housing Requirements for New Construction Hand-off *

7. Elevator Ordinance Hand-off *

8. Writing a Letter to Council Re: Ongoing Commission meetings

9. I. Ethnicity & Disability Statistics of People who

have contracted Covid in Berkeley since the beginning of the pandemic.

II. Utilization rates and accessibility of City of Berkeley Covid testing sites for BIPOC people with disabilities.

IV. Number of BIPOC people with disabilities who have accessed Covid related and/or supportive services since the beginning of the pandemic.

III. Vaccinations distribution among seniors and BIPOC communities with disabilities in Berkeley
(Freeman)

. **Announcements**

C. INFORMATION ITEMS AND SUBCOMMITTEE REPORTS

D. COMMUNICATIONS

1. FUTURE AGENDA ITEMS (from adopted work plan, referrals, etc.)

TBD

E. ADJOURNMENT: no later than 9:00pm

Agenda Posted: TBD

* Indicates written material included in packet.

** Indicates material to be delivered at meeting.

*** Indicates material previously mailed.

A complete agenda packet is available for public review on the web at:

https://www.cityofberkeley.info/Clerk/Commissions/Commissions_Commission_on_Disability_Homepage.aspx

Available also at the main library, and Public Works, Engineering Division, 1947 Center Street, 4th Floor.

ADA Disclaimer



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Commission Secretary: Dominika Bednarska, Disability Services Specialist, 1947 Center St., 4th Floor, Berkeley, CA, 94704, Telephone (510) 981-6418, Fax: (510) 981-7060 TDD: (510) 981-6347.

Email: DBednarska@cityofberkeley.info



Commission on Disability
AGENDA
Special Meeting Minutes

Commission on Disability

Wednesday 12/09/2020 6:00 PM

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH ZOOM VIDEOCONFERENCE AND TELECONFERENCE

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videoconference screen.

A. PRELIMINARY BUSINESS

- 1) Call to Order by Chair Ghenis at 6:08 PM
- 2) Roll Call by Secretary—Present: Leeder, Ghenis, Walsh, Freeman, Singer. LOA: 0 Absent: 0
- 3) Public Comment on Items Not on the Agenda. (Up to 3 minutes per speaker) None.
- 4) Approval of Draft Action Minutes of March 4 2020* (Freeman/Leeder, all ayes)
- 5) Staff Update.
- 6) Approval and Order of Agenda (Leeder/Freeman, all ayes)

B. DISCUSSION/ACTION ITEMS

The public may speak at the beginning of any item.
(Comments may be limited to 3 minutes per speaker)

Commission will take a 5 minute break around 8pm

1. Meeting logistics and related concerns.

Clarify that all concerns have been addressed; note if there are any ongoing barriers, and what barriers are; progress as needed. (5 min / Ghenis)

Commission would like to meet regularly. Secretary will communicate this to management.

2. BART CAG Appointment (5 min/ Ghenis)

Motion: Appoint Ghenis and Walsh as alternate. (Leeder,

Singer, all ayes)

3. Workplan Discussion. (20 minutes/ Ghenis)

Motion: Request second meeting from City Manager to approve Workplan. (Leeder, Walsh, all ayes)

4. Covid information and web accessibility (5 min/Walsh)

Postponed.

5. Announcements

C. INFORMATION ITEMS AND SUBCOMMITTEE REPORTS

D. COMMUNICATIONS

1. FUTURE AGENDA ITEMS (from adopted work plan, referrals, etc.)

- Discuss whether Commission should write a letter to City Council to request ongoing meetings.

E. ADJOURNMENT: 8:59 PM. (Leeder/Freeman, all ayes)

Agenda Posted: TBD

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Commission on Disability - 2020-21 Annual Workplan

1. COVID Management and Recovery

Track developments and impacts from the Covid-19 pandemic, including but not limited to: disproportionate health impacts for people disabilities; consequences for health care providers; disruptions in disability supports (e.g. reduction in small businesses providing necessary products and services); increase in Berkeley residents with long-term disabilities due to post-Covid complications; and reduction in city budgets for services and infrastructure improvements (e.g. sidewalk repair efforts). Engage relevant city departments, request presentations and gather community feedback.

2. Improved Transportation and Mobility

Continue efforts related to the “navigable cities” framework for safe, accessible pedestrian pathways and other transportation infrastructure, including appropriate street layouts in redesigned transportation corridors. Also ensure universal accessibility of relevant applications, kiosks, ride-sharing services, Transportation Network Companies (TNCs), bikes and scooters (including shared mobility), and “emerging technology” such as automated vehicles (ATVs). Address public transportation concerns and safety, including budgets and onboard safety related to the Covid-19 pandemic.

3. Public Input and Public Outreach for COD

Implement communication channels with other city Commissions; pursue “cross-membership” with other commissions, where COD members request to be appointed to other commissions with vacancies; prioritize commissions whose coverage affects people with disabilities (e.g. peace & justice, zero waste, planning, homelessness, etc.). Raise awareness of COD within the disability community and relevant stakeholders (e.g. neighborhood and business associations) and invite community members and stakeholders to attend COD meetings. Outreach should include opportunities for community members to request accessibility modifications, including for remote meetings (e.g. captioning on Zoom). Develop a consistent process and timeframe for community engagement.

4. Engagement and Advisory Role for City Processes

Increase outreach and requests for timely presentations and information from City of Berkeley staff and other relevant officials (e.g. at the county or regional levels). Utilize the Commission on Disability as a public forum and oversight body, especially in the face of unprecedented challenges during the continuing Covid-19 pandemic and recovery therefrom. Utilize COD as an advisory & monitoring body to increase accessibility & accountability in city efforts and other areas of influence.

5. Accessible and Affordable Housing

Explore the expansion and improved availability of accessible housing for people with disabilities, including going beyond baseline ADA access requirements in new construction (e.g. adding automatic door openers, units with roll-in showers and other universal access features, etc.). Recognize a likely slowdown in new construction and increase efforts at encouraging accessibility retrofits of existing buildings, whether

single-family homes or multi-unit apartments/condominiums. Address affordability as a key factor for housing, especially given the disconnect between affordability and accessibility (given newer buildings are more accessible but also tend to have higher rents).

6. Homeless people with Disabilities

Support Berkeley's population of homeless residents with disabilities. Collaborate with local service providers to address disability-related needs, such as access to healthcare or repairs of medical equipment (wheelchairs, scooters, walkers, etc.). Address timely issues, such as pandemic safety and wildfire smoke.

7. Emergency/Disaster Preparedness

Receive information and ongoing updates, participate and make recommendations as appropriate about Berkeley's BEACON and CERT programs. Address increasing frequency of Red Flag Warning events, wildfire danger, Public Safety Power Shutoffs, poor air quality days, and extreme heat vents. Maintain oversight and efforts around earthquake safety.

8. Student Life and Disability Awareness

Improve communication and collaboration with Berkeley's many students with disabilities, providing community engagement and leadership opportunities and supports for independent living. Address all populations including students with disabilities in elementary through high school, Berkeley City College, UC Berkeley, and private entities.

9. Accessibility in City Events, Meetings, Communications & Information Technology

Work with city staff, commissions, and other relevant partners to guarantee inclusion and accessibility of events, meetings and communications. Guarantee access to multiple media, taking into account a diversity of disabilities and the overall digital divide (i.e. disproportionate access to Information Technology and related services); this can include printed (paper) communications and information items, as well as those items in accessible (e.g. Braille or large-print) format. Ensure that all meetings and events are accessible through the Internet for those who cannot attend; this is especially important considering health and wellness in light of the Covid-19 pandemic and its ongoing effects.



[Commission Name]

[CONSENT OR ACTION]
CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Commission on Disability
Submitted by: Alex Ghenis, Chairperson, Commission on Disability
Subject: Accessibility in building entrances and multifamily dwelling units

RECOMMENDATION

Adopt first reading of an Ordinance to require that at least one entryway in covered new construction features an automatic door opener; that all newly-constructed buildings with multiple stories feature at least two (2) elevators; and that at least 20% of residences in covered multifamily dwelling units include an accessible shower with grab bars in the shower and around that bathroom's toilet.

SUMMARY

Currently, Berkeley's building code largely does not expand accessibility considerations beyond what is included in State and Federal regulations. There are three (3) notable shortcomings in those regulations regarding physical accessibility for persons with disabilities. The related changes to city ordinances would remedy those shortcomings with associated benefits.

First, there is no requirement for automatic door openers on the ground level of new buildings, including multifamily dwelling units (e.g. apartments and condominiums), which limits accessibility for people who cannot open doors (easily or entirely) without assistance. This ordinance requires automatic door openers at the ground level of buildings.

Second, new multi-story buildings, including multifamily dwelling units, are not required to have multiple elevators except when needed to guarantee timely evacuation of all occupants, which severely limits access should a building's sole elevator become inoperable (e.g. awaiting maintenance). This ordinance improves access, safety, and financial stress by requiring that new construction features at least 2 elevators to maintain access should one elevator be inoperable.

Third, there is no guarantee that any apartments or condos in new multifamily dwelling units have accessibility features needed by many people with disabilities, namely accessible showers and grab bars for individuals with mobility disabilities. As a result, there is a limited number of accessible homes available to persons with mobility

disabilities, which is already a problem and will expand in the future as the local population ages. Tenants who seek to modify bathrooms in rental units may be required to pay for those modifications, and can also be required to revert the unit to its original condition before vacating the residence; landlords can even require tenants to pay for ground-level automatic door openers and other modifications of common space. This is prohibitively expensive for many people with disabilities in our city. This ordinance outlines that new covered multifamily dwelling units have no less than 20% of units with a roll in shower and includes grab bars in those showers and around that restroom's toilet.

This proposal will modify the Berkeley Municipal Code to require that newly-constructed buildings feature automatic door openers in at least one primary entrance and exterior ground floor exit door; that all new multi-story buildings feature at least two (2) elevators; and that no less than 20% of residential units in multifamily dwelling units feature showers that are accessible to persons with disabilities (as opposed to bathtubs or smaller, inaccessible showers) and include grab bars in those showers and around that restroom's toilet.

The outcomes of these changes to city code will increase physical accessibility of commercial and residential buildings for people with disabilities in Berkeley. Individuals will be able to easily open doors on their own without asking for assistance, will have access to a wider range of housing options without significant extra costs, and will have more reliable access to and from upper stories (including apartments/condos and job offices) with additional safety benefits. Although there will be additional expenses for building construction, the benefits around accessibility, safety, and equity outweigh the costs.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation will have minimal, if any, increased costs to the City related to new construction permitting and oversight. The City may ultimately see cost savings related to buildings having multiple elevators, as some residents require emergency services for egress should an elevator stop working (e.g. for firefighters carrying that individual down a stairwell, and any need to transport medical equipment) – and that assistance (and expense) will not be needed when buildings have multiple elevators.

Direct costs will be borne by new construction but will provide appropriate benefits relative to any expenses. We believe that these costs will be at least partially recouped over time, and in some cases may provide a positive payoff for developers. In the case where an accessibility feature eliminates the need for a later remodel (e.g. constructing an accessible shower initially rather than replacing a tub later-on), there will be cost savings overall. This will also ensure that accessibility costs are covered by building owners rather than tenants with disabilities, thus providing equity benefits.

High quality automatic door openers (e.g. those used in commercial buildings and multistory family units' ground-level entryways) cost under \$10,000 to install with

relatively little maintenance. This is a small amount when compared to a full building's construction costs, which can be in the tens of millions of dollars (as is the case for the growing number of mixed-use multifamily dwelling units). Retrofitting buildings to add automatic door openers may cost slightly more than including them in the initial construction – and although landlords cannot prevent tenants from requesting an automatic door opener, a landlord may make the tenant cover the cost of installing the opener itself. This will thus prevent a significant – and possibly insurmountable – financial burden for tenants with disabilities. It is also possible that door openers could be viewed as a building amenity that would increase the overall value of rental units.

The cost of ensuring that at least 20% of units feature accessible, roll-in showers, is marginal for developers. The legally-required footprint of a roll-in shower is the same as most bathtubs, meaning floor plans could mostly stay the same. Pre-fabricated showers are already in production, just like bathtubs, and likely cost little if any more than a bathtub. The cost of adding grab-bars – metal or reinforced plastic bars in bathrooms, which help people with disabilities – may be a few hundred dollars per unit, which is a fraction of most construction costs. Accessible features in the initial construction, though, prevent the need for expensive remodels should a tenant need a roll-in shower and/or grab bars. The costs of such remodels can be several thousand dollars, even \$10,000 or more – and although landlords cannot prevent tenants with disabilities to make reasonable modifications, the tenants can be made to cover the costs, which is a significant burden for a population with lower-than-average income and assets. It is possible that developers will see higher demand for accessible units, which many people with disabilities need but are difficult to find; this demand will only continue to grow as the local population ages, given rates of disability increase with age.

Elevators carry higher costs but valuable benefits. Elevators for multi-story buildings may cost between \$100,000-\$500,000 apiece, depending on the elevator's footprint and number of floors, while each elevator shaft occupies an area that could otherwise be rentable floor-space. Therefore, buildings that would otherwise have one elevator will have higher construction costs and less marketable floorspace by adding an extra elevator. However, building owners will recoup some or all costs over a building's lifetime by avoiding more expensive, rushed repairs and by realizing higher demand when listing multiple elevators in a building's amenities. An existing city code (the "elevator ordinance") requires that residential landlords whose sole elevator breaks down must compensate tenants who need to find temporary housing (e.g. a hotel) until the elevator is repaired; thus, landlords will save potentially-thousands of dollars in compensation each time one elevator breaks down, depending on the number of residents with disabilities and the elevator's repair timeline. The "elevator ordinance" has certain limitations – such as the permission for landlords to stop payments after 10 days – meaning that redundant elevators would also save residents from financial hardship. The City of Berkeley may also see savings for its emergency services, for example if the fire department must be called to carry somebody downstairs.

Redundant elevators will provide significant financial benefits to individuals with disabilities who would otherwise face financial hardships from broken elevators, such as in the cases they are unable to reach a place of business (e.g. their employer), reach their own condo/apartment, or be stuck in an upper story (at a business, apartment, etc.). Some examples of those financial benefits include: employees at organizations in multi-story buildings will avoid the logistical problems of working remotely or otherwise taking personal leave time; tenants with disabilities will avoid the expenses not addressed in the “elevator ordinance” (e.g. costs for hotels beyond 10 days or for moving specialized beds and equipment); and people with disabilities will avoid any out-of-pocket costs for being transported downstairs should they be on an upper floor when the elevator breaks down (whether in a business or at home).

CURRENT SITUATION AND ITS EFFECTS

Improving accessibility in new buildings and residential units is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

The City of Berkeley is seeing significant construction of commercial, residential and mixed-use buildings to meet local economic and population growth, as well as address the Bay Area’s ongoing housing crisis. New construction provides many accessibility features for people with disabilities, including but not limited to: wide doorways and hallways, functioning elevators, appropriate resistance weight to open doors, and restrooms with sufficient space to maneuver wheelchairs and other mobility devices.

However, existing building code does not appropriately meet the accessibility needs of many people with disabilities. Three notable shortcomings are the absence of requirements for automatic door openers (needed by many people with disabilities, including those who use mobility equipment and those with limited dexterity, arm strength and/or arm movement); not specifying the number of elevators necessary in a building, leading to buildings with only one elevator that become inaccessible should its sole elevator be inoperable; and the absence of requirements for accessible bathing facilities in residential construction, specifically roll-in showers for persons with mobility disabilities and grab-bars for balance and safety.

First, some people with disabilities cannot open a door on their own, while opening a door is possible but difficult for another group of people with disabilities. Current city code does not require that new construction of commercial or multi-family residential buildings have automatic door openers, making it so some buildings are built that do not feature door openers on some or all external doors. Those buildings are functionally inaccessible to some people with disabilities, without assistance. In commercial buildings, this means some people with disabilities wanting to enter a building must ask a stranger to open and hold the door; people exiting buildings may need to wait for

someone else to leave, which could take several minutes or longer. In residential buildings, a lack of door openers makes them functionally inaccessible for some people with disabilities, and the limited multifamily dwelling buildings with door openers limits the number of potential homes that people with disabilities can live in. Meanwhile, residential units present a more complex picture. The landlord cannot prevent a modification if it is reasonable to improve access, per the Americans with Disabilities Act (ADA). But they do not have to pay for the modification, even if it is in a door opener in a shared building entrance and also benefits other tenants: because ground-level door openers can cost between \$5000 and \$10,000, the tenant with a disability will face a financial burden that is extremely difficult for some to afford and out-of-reach for others. This is unfair and inequitable.

The second main issue addressed by this proposal is the allowance of multistory buildings to have only one elevator, which reduces redundancy for reliable elevators with significant consequences for some persons should that elevator break down. The only section of the California Building Code that specifies a number of elevators states that a building simply must have enough elevators to allow for a “(f)ull-building evacuation where the analysis demonstrates that the number of elevators provided for evacuation results in an evacuation time of less than 1 hour.” (*2019 California Building Code, Ch. 30, Sec 3008.1*) This also means that buildings below an undefined height and area may be allowed to only have only one elevator (the Commission believes this number may lie between 5 and 10 stories, on average). Elevators occasionally break down and most repairs are completed relatively quickly – but in some circumstances, broken elevators can take days or weeks to repair.

For most people and in most situations, a broken elevator is an inconvenience at worst. For people with disabilities, it may be an insurmountable barrier to traveling even one story. This includes people who use wheelchairs or scooters, those with chronic pain and fatigue, and other groups. Accessing upper floors from ground level becomes virtually impossible when an elevator breaks, meaning people with disabilities cannot reach offices or appointments, run errands, or get home to their own apartment. If an elevator breaks while somebody is on the second floor or higher, they will be stuck in their second-story (or higher) apartment, their place of work, or a doctor’s office; if they need to leave, they will either have to wait until the elevator is repaired or possibly call the fire department to carry them downstairs. Consequences range from lost income to missed doctor’s appointments to being unable to get home, with associated costs (e.g. hotel rentals). If emergency personnel need to carry somebody downstairs, costs to the fire department will be transferred to the City.

The only City ordinance related to this issue (the “elevator ordinance”) addresses the actions a landlord must take should a building’s only elevator break down while a tenant is not home. The ordinance requires that a landlord must compensate their tenant for

any nights in a hotel until the elevator is repaired, and provide other supports if the elevator is not fixed within a two (2) week timeframe. There are some notable shortcomings to this, with at least two (2) that stand out. First, staying in a hotel is a major inconvenience: tenants with disabilities would need to transport clothing and potentially medical supplies and devices with little support; the initial charge for hotels may fall on the tenant and then be reimbursed, which is prohibitive for some people with disabilities; not having a kitchen is incredibly difficult; and so forth. Second, individuals who are in an apartment are essentially trapped when an elevator breaks: if they need to go downstairs after a certain timeframe, they may need to request help from City emergency personnel with associated difficulties, dangers, and costs; if they are able to get downstairs, they will then need to rent a hotel room and deal with the associated problems listed above. If they are in a building other than their home, they may be unable to “wait it out” and simply call emergency services before the end of the evening.

The third topic concerns accessible bathing facilities in multifamily dwelling units. Berkeley is seeing growth of its stock of multifamily dwelling units (buildings with multiple condominiums or apartments). They may have a footprint ranging from a large parcel of land – say, enough for 10 units per floor – to nearly half a city block. In general, they are some of the most accessible housing units in the city: they are using building codes that follow the Americans with Disabilities Act (ADA) guidelines with appropriately wide doorways, clear pathways, and so on. Many range between 1 and 3 bedrooms and feature between 1 and 3 bathrooms. Some also feature designated affordable-housing units. However, the standards for restrooms have one significant shortcoming. The current requirements outline that at least one bathroom must feature a bathing area (either tub or shower) with a footprint large enough to accommodate an accessible roll-in shower, and that structural sections of walls (e.g. wooden studs) be strong enough to support metal or reinforced-plastic grab bars (which some people use for balance and safety). This either results in landlords constructing that bathroom so that: it features a tub and no grab bars, but the tub could be torn out and replaced with tiling, while grab bars are added; it features a tub and grab bars; or it features an accessible roll-in shower with grab bars. Should someone retrofit the bathroom, they would have to tear out the tub and replace it with tile or a pre-fabricated shower and/or drill through walls to add grab bars. Although landlords cannot prohibit tenants from requesting or making building modifications that are reasonable accommodations (e.g. installing a shower with grab bars), the tenant may be made to shoulder the costs. This is a significant or insurmountable barrier for many people with disabilities, especially because this community has lower average income and assets than the able-bodied population. The result is a significant shortage of fully accessible housing units, with related consequences for Berkeley’s residents with disabilities. This will only be a growing problem as the local – and regional – population ages, given that rates of disability increase with age.

BACKGROUND

There is a notable shortage of fully accessible housing in the City of Berkeley and Bay Area as a whole. This leads some individuals with disabilities to live in undesirable housing and/or spend thousands of dollars on accessibility retrofits; retrofit costs can be borne by tenants with disabilities in rental units as well. Considering Berkeley's existing community of people with disabilities and likely growth of residents with disabilities, given Berkeley's aging population, prioritizing accessible housing (and accessibility in general) is paramount.

The widespread housing construction in Berkeley – specifically mixed-use multi family dwelling units – provides a great opportunity to expand our city's accessible housing stock. However, while existing local and state housing code regulations and the Americans with Disabilities Act provide strong accessibility requirements, there are some notable shortcomings. First, accessibility requirements for primary entrances and exterior exit doors address spring-weight for ease of opening and closing for some people with disabilities; this is insufficient, though, for those people with disabilities who do not have the dexterity and/or strength to pull open a door. Second, buildings under a certain size are allowed to have only one elevator, which could strand people with disabilities inside their origin or outside their destination, even if their destination is their place of work or home; an existing city ordinance requires landlords to pay for temporary housing should an elevator break down, but this is only required for 2 weeks and tenants may need to pay upfront and request a reimbursement. Finally, requirements for bathing and toilet facilities in multifamily dwelling units outline size and maneuverability of restrooms, as well as dimensions etc. for bathtubs and showers therein; there is nothing to guarantee, though, that *any* units in new construction feature the accessible showers ("roll-in showers") that many people with mobility disabilities require, nor the grab bars that ensure their safety. These shortcomings – around ground-level automatic door openers, redundant elevators, accessible bathing facilities in residential units, and the presence of the grab bars for balance and safety – should be addressed to provide more accessible paths of travel, personal safety, and universally-accessible housing options for Berkeley's visitors and residents with disabilities.

ENVIRONMENTAL SUSTAINABILITY

There is minimal environmental impact related to ensuring accessibility in new construction. Any environmental impacts related to this proposal are likely positive. First, taking a shower tends to use less water than taking a bath in a bathtub – so any reduced number of bathtubs and increased showers may save water. Second, while there is virtually no environmental impact from including accessibility features in new construction, this proposal may prevent the need for post-construction retrofits and related environmental impacts from acquiring materials, transporting materials, operating equipment, etc.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

N/A

RATIONALE FOR RECOMMENDATION

Existing State and Federal building codes provide many valuable requirements regarding accessibility for people with disabilities in commercial buildings and multifamily dwelling units. However, there are a few significant shortcomings with related consequences. These shortcomings are: no requirement for ground-level automatic door openers, no requirement for more than one elevator for buildings under a certain size, and no requirement for any portion of new housing stock to include fully accessible bathrooms. This creates barriers for some people with disabilities regarding: smooth entry and exit of buildings, ability to change floors in multi-story buildings if a sole elevator stops working, and finding accessible housing without spending significant personal funds on bathroom remodels. We believe the recommendations of this proposal address mobility, safety, financial stability, and housing equity for people with disabilities in a reasonable manner. It will provide smooth access into and out of buildings for many people with disabilities, will safeguard the mobility and safety of individuals needing to change floors in buildings with one broken elevator, and will increase the volume of fully-accessible housing stock with related benefits for people with disabilities.

It is relatively straightforward to add the 2 extra accessibility features of ground-level automatic door openers and a minimum number of units with roll-in showers and grab bars. Although adding at least 2 elevators, in order to improve redundancy should one break down, can be more costly, the benefits around mobility, safety, financial savings (for both tenants and landlords), etc. are worth the cost and align with the city's goals of increased access and equity. Meanwhile, these features in no way harm residents without disabilities, and in some cases can provide benefits: automatic door openers, for example, are very useful for able-bodied persons carrying boxes, grocery bags, etc. and for those pushing strollers. Residents with temporary disabilities (e.g. non-permanent leg injuries) can also benefit from automatic door openers. And multiple, redundant elevators allow for shorter waits for all residents while providing redundancy for residents who can walk upstairs, but only with difficulty.

The cost-benefit of the proposal also makes sense. The cost of door openers and accessible restrooms is minimal relative to building construction costs for commercial buildings and multifamily dwelling units. The cost of post-construction retrofits, on the other hand, can be unfavorable to building owners who take them on – and damaging to people with disabilities' savings, if they can afford retrofits at all (most people with disabilities on SSI and/or Medi-Cal, for example, are not even allowed to have more than \$2000 in assets, making it impossible to pay for multi-thousand-dollar retrofits). Meanwhile, the benefits of full access to public spaces and areas of employment provides social integration and better economic opportunities. With regards to showers and grab bars, the benefit of securing comfortable, accessible housing (and hygiene) is incalculable for those people with disabilities who otherwise could not find such housing

or pay for retrofits. This increase in access also meets Berkeley's stated social equity and affordable housing goals by making equal quality housing available for its residents with disabilities.

We recognize that requiring all new buildings with 10 or more units and 2 or more stories (existing city code, Chapter 19.50) to have at least 2 elevators can introduce significant costs to new construction. However, the outsized nature of redundancy's benefits – such as protecting people with disabilities from being stranded in buildings and needing to call emergency services, needing to stay in a hotel for days or weeks, and facing many financial and logistical burdens – is enough to justify the cost from the standpoints of safety, independence, financial burdens and equity.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions included the following. First, the Commission on Disability considered submitting a resolution directing the City Manager or other appropriate staff to draft an ordinance requiring these accessibility features; the Commission favored the current proposal because these changes to the Berkeley Municipal Code align with similar code structures and formats, so referrals to staff did not seem necessary. Second, the Commission considered dividing this proposal into 2 separate sections of the Berkeley Municipal Code (one for door openers and restrooms, and one for elevators); the Commission favored this proposal because of the similar goals of both accessibility features, and because it would align better with Berkeley Municipal Code formatting (where one section adopts a segment of the California Building Code and modifies it accordingly). The Commission considered further actions for residential accessibility, such as including unit-level automatic door openers on limited apartments/condominiums or establishing rules to protect tenants from shouldering the entire cost of unit-level or common-area retrofits (when deemed "reasonable accommodations"); the Commission decided that those proposals should not be included in this Ordinance, if they are to be added to the Berkeley Municipal Code at all, and will instead explore them at a later time.

Finally, the Commission considered using another approach to improve safety and accessibility should an elevator go down – including the option to have another accessible pathway, such as a ramp, that would reach the top floor. However, those other accessibility options may be especially difficult for individuals with disabilities: notably, regularly moving up and down one or multiple stories on a ramp could be especially exhausting for some individuals with disabilities (e.g. persons with limited strength and/or chronic fatigue who use manual mobility devices including wheelchairs, canes and walkers). There was some discussion of allowing buildings to have just one elevator if they are under a certain height and footprint, and/or exempting commercial buildings from the redundant-elevator ordinance. Ultimately, though, the reasons listed for providing redundant elevators are valid for multi-story buildings of any height; the majority of Berkeley's new buildings are also 4 stories or taller, so few buildings would be of the size limits we considered. Our ultimate decision was to include redundant

elevator statutes in the existing city code which best addresses elevators: this code (Chapter 19.50) addresses “buildings with ten or more units and two or more stories,” thus that is the proposed threshold.

CITY MANAGER City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission’s Report. [OR] Refer to the budget process.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, “See companion report.”

CONTACT PERSON

[Name], [Title], [Department], [Phone Number]

Attachments: [Delete if there are NO Attachments]

1: Ordinance

 Exhibit A: [Title or Description of Exhibit]

 Exhibit B: [Title or Description of Exhibit]

2: [Title or Description of Attachment]

3: [Title or Description of Attachment]

ORDINANCE NO. -N.S.

ORDINANCE TO INCREASE ACCESSIBILITY IN NEW MULTI-STORY BUILDINGS
AND MULTIFAMILY DWELLING UNITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 19.28 is amended to read as follows:

19.28.110 Accessibility in building entrances and multifamily dwelling units

Chapter 11A of the 2016 California Building Code is adopted in its entirety subject to the modifications thereto which are set forth below.

Section 1117A General Requirements for Accessible Entrances, Exits, Interior Routes of Travel and Facility Accessibility.

Note: In addition to provisions of this division, Interior Routes of travel that provide access to, or egress from, buildings for persons with disabilities shall also comply with Chapter 10

1117A.1 General.

When buildings are required to be accessible, building facilities shall be accessible as provided in this division. Where specific floors of a building are required to be accessible, the requirements of this division shall apply only to the facilities located on accessible floors.

1117A.2 Primary entrances and exterior exit doors.

All primary entrances and exterior ground floor exit doors to buildings and facilities on accessible routes shall be accessible to persons with disabilities. At least one primary entrance and exterior ground floor exit door accessible to persons with disabilities must feature an automatic door opener. The automatic door opener should function using a push-button, call box code, and/or remote operable by individuals with disabilities.

1117A.3 Separate dwelling unit entrances.

When a ground-floor dwelling unit of a building has a separate entrance, each such a ground-floor dwelling unit shall be served by an accessible route, except where the terrain or unusual characteristics of the site prohibit an accessible route (see Section 1150A for site impracticality tests).

1117A.4 Multiple entrances.

Only one entrance to covered multifamily buildings is required to be accessible to anyone ground floor of a building, except in cases where an individual dwelling unit has a separate exterior entrance. Where the building contains clusters of dwelling units with each cluster sharing a different exterior entrance, more than one entrance may be required to be accessible, as determined by analysis of the site. In every

case, the accessible entrance shall be on an accessible route to the covered dwelling units it serves.

1117A.5 Entrances from parking structures, tunnels or elevated walkways.

Where direct access for pedestrians is provided from a parking structure to a building or facility, each direct access to the building or facility entrance shall be accessible.

Where direct access for pedestrians is provided from a pedestrian tunnel or elevated walkway to a building or facility, all entrances to the building or facility from each tunnel or walkway shall be accessible.

...

Section 1134A Bathing and Toilet Facilities

1134A.1 General.

All bathrooms, bathing and toilet facilities within covered multifamily dwelling units shall comply with this section.

1134A.2 Number of complying bathrooms.

Within covered multifamily dwelling units, at least 20% of dwelling units must include an accessible shower that must comply with Section 1134A.6; bathrooms with accessible showers must feature grab bars in the shower and around the bathroom's toilet. In addition, all bathrooms in covered multifamily dwelling units ~~Bathrooms~~ shall be designed to comply with one of the following options:

Option 1.

All bathrooms within the dwelling unit shall be designed to comply with the following:

1. Toilet, bathing and shower facilities shall comply with Section 1134A.4.
2. Bathtubs shall comply with Section 1134A.5.
3. Showers shall comply with Section 1134A.6.
4. Water closets shall comply with Section 1134A.7.
5. Lavatories, vanities, mirrors and towel fixtures shall comply with Section 1134A.8.
6. Bathrooms shall be provided with an accessible route into and through the bathroom.
7. If a door is provided, it shall comply with the requirements of Section 1132A.5.
8. A minimum 18-inch (457 mm) clear maneuvering space shall be provided on the swing side of the door at the strike edge of the door.
9. Switches, outlets and controls shall comply with Section 1142A.
10. Reinforced walls to allow for the future installation of grab bars around the toilet, tub and shower shall comply with Sections 1134A.5 for bathtubs,

1134A.6 for showers and 1134A.7 for water closets. Grab bars shall comply with Sections 1127A.4- and 1127A.2.2, Item 4.

Option 2.

Only one bathroom within the dwelling unit shall be designed to comply with the following:

1. Toilet, bathing and shower facilities shall comply with Section 1134A.4.
2. Bathtubs shall comply with Section 1134A.5.
3. Showers shall comply with Section 1134A.6.
4. Water closets shall comply with Section 1134A.7.
5. Lavatories, vanities, mirrors and towel fixtures shall comply with Section 1134A.8.
6. Where both a tub and shower are provided in the bathroom, at least one shall be made accessible. Additional requirements apply to dwelling units containing two or more bathrooms when a bathtub is provided as the accessible bathing feature.

Where two or more bathrooms are provided within the same dwelling unit and a bathtub is installed to comply with Option 2, Item 6 in one bathroom and a shower stall is provided in a subsequent bathroom, both the bathtub selected to comply with Option 2, Item 6 and at least one shower stall within the dwelling unit shall meet all the applicable accessibility requirements provided in Section 1134A. (See Section 1134A.5 for bathtubs, or Section 1134A.6 for showers.)

7. When two or more lavatories are provided, at least one shall be made accessible and comply with Section 1134A.8.
8. Bathrooms shall be provided with an accessible route into and through the bathroom.
9. If a door is provided, it shall comply with the requirements of Section 1132A.5.
10. A minimum 18-inch (457 mm) clear maneuvering space shall be provided on the swing side of the door at the strike edge of the door.
11. Switches, outlets and controls shall comply with Section 1142A.
12. Reinforced walls to allow for the future installation of grab bars around the toilet, tub and shower shall comply with Sections 1134A.5 for bathtubs, 1134A.6 for showers and 1134A.7 for water closets. Grab bar shall comply with Sections 1127A.4 and 1127A.2.2, Item 4.

When Option 2 is used, all additional bathrooms must comply with Items 8 through 12 above.

...

Section 1134A Bathing and Toilet Facilities

Sections 1117A and 1134A. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits [Delete if there are NO exhibits]

A: Title of the Exhibit

B: Title of the Exhibit



Commission on Disability

INFORMATION
CALENDAR
Meeting Date:

To: Honorable Mayor and Members of the City
Council

From: Commission on Disability

Submitted by: Alex Ghenis, Chairperson, Commission
on Disability

Subject: Elevator Ordinance Referral Information

INTRODUCTION

The Elevator Ordinance Referral aims to provide alternative housing to people with disabilities in the event of an emergency or out-of-service elevator in apartment complexes of 10 or more units and 2 or more stories. However, the municipal code should provide more adequate financial means in order to provide adequate and accessible accommodations, especially to tenants who use medical equipment and mobility devices.

SUMMARY *[This section, included only if report exceeds three pages, replaces the introductory paragraph described above.]*

CURRENT SITUATION AND ITS EFFECTS

The intent of the elevator ordinance referral is to protect members of people with disabilities and seniors who depend on mobility devices from being displaced or having to face an undue financial burden for seeking alternative accessible housing following an unexpected elevator outage in their apartment complex residencies. These problems are especially serious in the City of Berkeley and the greater Bay Area where conventional, affordable housing is scarce while accessible, affordable housing is exceptionally rare. Moreover, there is no written, explicit protocol for landlords and owners of apartment complexes of 10 units or more and 2 stories or more to follow if an elevator were to go out of commission.

BACKGROUND

People with disabilities and the elderly are often the last minority population to be evacuated or left behind in case of a disaster emergency or a malfunction occurrence in effect of an elevator not being in service and often have difficulty in finding and affording the cost of alternative accessible housing or rent of a hotel and food costs outside their normal rental payments monthly because these people can't seek adequate employment and have to on government assistance to survive. Therefore, the landlord should provide an incentive on reduced payments of rent if an elevator is not in service for a long period of time

ENVIRONMENTAL SUSTAINABILITY

If there is a fire, earthquake, water damage, or some type of natural disaster, it is not recommended to use the elevator.

POSSIBLE FUTURE ACTION

One action that should be considered is changing the language of the Elevator Ordinance referral to include a requirement for owners or landlords to provide alternative accessible housing, which can include an accessible unit in the property, an accessible hotel, et cetera, to those tenants with disabilities who rely on elevators to access their residencies if the elevator will be out-of-service, be it for maintenance or a malfunction, for 24 hours or longer. Such amenities to qualify as an alternative, accessible unit shall include roll-in showers or bath with bars next to the toilet, a low-rising bed, a unit or room wide enough for mobility device users / wheelchairs to access, and a unit or room with a functioning elevator or ground floor access without disregard for any of these amenities. In the event of an out-of-service elevator for a period over 24 hours, the landlord or owner must provide a two hundred dollars per night voucher to cover the cost of housing for tenants with disabilities / seniors who are affected in addition to a food voucher of up to two hundred dollars depending on the duration of the elevator outage.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Landlords and owners in the City of Berkeley are obligated to have liability insurance in the event of a person

suffering from an accident in the property among other reasons. If a tenant with a disability were to suffer from an accident in an apartment complex owned by a landlord that does not possess liability insurance, the City of Berkeley would have to intervene, costing the city money and resources of an amount that depends on the severity of the situation.

CONTACT PERSON

Dominika Bednarska, Disability Services Specialist,
Department of Public Works, (510) 981-6411

Attachments: [Delete if there are NO Attachments]

1: Resolution and/or Ordinance

 Exhibit A: [Title or Description of Exhibit]

 Exhibit B: [Title or Description of Exhibit]

2: [Title or Description of Attachment]

3: [Title or Description of Attachment]

Lopes, Bernadette

From: Bednarska, Dominika
Sent: Tuesday, February 09, 2021 8:26 AM
To: Lopes, Bernadette
Subject: Fw: BMC Chapter 19.50
Attachments: Recommended Changes to BMC.docx

Please add the below to the packet as the second to last item, if possible. Sorry and thank you! Dominika

From: Celia McGuinness [mailto:cmcguinness@dmglawfirm.com]
Sent: Wednesday, November 06, 2019 12:30 PM
To: Bednarska, Dominika <DBednarska@cityofberkeley.info>
Subject: BMC Chapter 19.50

Dear Dominika,

I understand that the Commission on Disability is considering revisions to the BMC Chapter 19.50, "Elevators – Buildings with Ten or More Units and Two or More Stories." I am a long-time disability rights lawyer. In my experience, this chapter is a very valuable tool for ensuring that tenants with disabilities have full and equal use of their homes.

Since the Commission is reviewing it, I have some edits to suggest which would make the chapter stronger, eliminating potential loopholes, clarifying standards and reducing the change of a court misunderstanding the intent of the code. I have attached proposed revisions. They are:

1. Requiring that alternative housing be accessible. "Accessible" could be defined with respect to the California Building Code.
2. Clarifying what standard for "reasonable arrangements" and "reasonable steps" applies in section 19.50.040(C). I have had a court express confusion whether the standard to apply is the elevator industry standard or the building operator industry standard. In my opinion, using the elevator industry standard is more protective of tenants, because it is a higher standard: Elevator maintenance and repair companies have more expertise. Every landlord with an elevator and will have that expertise at their disposal, since they will all have elevator maintenance vendor contracts. Furthermore, based on how the section reads now, the original intent of this section was to use the elevator industry standard. My suggested revisions just make that intent clearer.
3. Clarifying that both immediate repair and alternative housing are required, not one or the other, in section 19.50.060(A). We recently had a landlord argue that it had no obligation to repair the elevator immediately, so long as it provided alternative housing for ten days. Fortunately, the Court in my case rejected that argument, but my suggested revision (adding "and/or") would prevent other landlords and/or courts from making that mistake.
4. Removing the 10-day limit on providing alternative housing, where the elevator cannot be repaired immediately.
5. Raising the maximum cost of the alternative housing to meet modern economic realities.

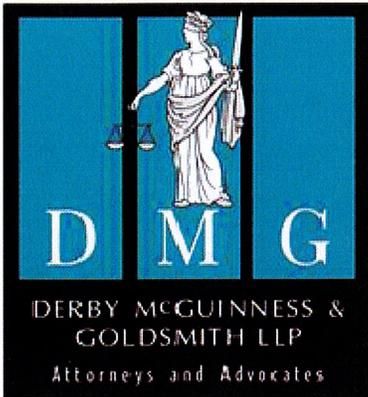
I am happy to provide more information or otherwise assist the Commission, however I can.

Sincerely,

Celia McGuinness, Esq.
Derby, McGuinness & Goldsmith, LLP

300 Lakeside Dr., Suite 1000
Oakland, CA 94612
Telephone: 510.987.8778 ext. 102

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19.50.040 Duty of building operators to maintain and repair elevator and to provide alternative housing

C. Delay beyond building operator’s control--Duty to provide alternative housing pending elevator repair: If the building operator is unable to complete a repair of an elevator malfunction within twenty-four hours of notice of its malfunction, due to circumstances beyond his or her control, such building operator shall locate and provide alternative housing for any person residing in the building who needs to use the elevator to gain access to or egress from his or her unit because of such person’s impaired ability to climb stairs as a result of such person’s physical disability, medical condition, infirmity, illness or other similar circumstance. Such alternative housing shall be decent, safe, sanitary, accessible to people with disabilities, and provided at the building operator’s expense, however, the cost to the building operator for providing such alternative housing shall not exceed one hundred eighty dollars per day or a total cost of one thousand eight hundred dollars. Access to or egress from such alternative housing shall not necessitate the tenant’s use of stairs. The building operator’s inability to timely repair shall be considered beyond the building operator’s control only if the building operator had previously made reasonable arrangements, judged by relevant elevator industry standards, to provide for expeditious repair of the elevator in the event of a malfunction, had regularly maintained the elevator and had taken all other reasonable steps, judged by relevant elevator industry standards, to repair the elevator at the earliest practicable time. The duty to provide alternative housing shall not arise if the building operator is prevented from repairing the elevator within twenty-four hours or any time thereafter due to a natural disaster or an act of God, provided that the building operator shall be relieved of this duty only during the period that the inability to repair is caused by the natural disaster or act of God.

Commented [McGuinnes1]: I recommend defining “accessible” to mean “compliant with the California Building Code requirements for disability access in hotels.”

Commented [McGuinnes2]: I recommend raising the cost limit to reflect the actual cost of safe, accessible hotels in Berkeley.

Commented [McGuinnes3]: I have had cases where elevators were out of service for fifteen days, six weeks and five months. I recommend removing the 10-day limit or, alternatively, lengthening it.

19.50.060 Failure to timely repair--Civil remedies.

A. Where the failure to timely repair an elevator and/or to provide alternative housing, as required by Section 19.50.040 of this chapter results in any person residing in the building having substantially restricted access to or egress from his or her unit because of such person’s impaired ability to climb stairs as a result of such person’s physical disability, medical condition, infirmity, illness or other similar circumstance, the person whose access to or egress from such building has been substantially restricted as set forth in this subsection may bring a civil action for: