

Dear California Building Standard Commissioners:

Thank you for this opportunity to comment on proposed code changes from the Division of the State Architect. We appreciate that many of the proposed changes create a better opportunity for enforcement of California's accessibility requirements by providing better and more consistent language. However, we have an over-all concern that the state architect did not consult with members of the disability community before submitting these code changes to the Commission. As we will state repeatedly in our comments below, we are specifically concerned about compliance with Government Codes 4450, 111346.45 and 11346.5. In addition, some of the proposed code changes violate Government Code 4459 in that they decrease state access standards.

Section 202, definition of **ACCESSIBLE ROUTE**. (begin strikeout) A continuous, unobstructed path that complies with Chapter 11. (end strikeout) **[DSA-AC]** *A continuous unobstructed path connecting accessible elements and spaces of an accessible site, building or facility that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by persons with other disabilities. Interior accessible routes may include corridors, hallways, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.*

**ACTION REQUESTED:** We request that this proposed code change be denied or returned for further study for clarification of how the term "negotiable" is defined if, as proposed, it does not require compliance with defined terms for accessibility as codified in Chapter 11B. ("Accessible" is a term of art meaning that it complies with DOJ codes for barrier removal. "Negotiable" is getting in and through by some means possible.

**SUGGESTED REVISIONS TO THE TEXT:** The original definition, "A continuous, unobstructed path that complies with Chapter 11," should be retained.

In addition, the next paragraph should be amended as follows:

*ACCESSIBLE ROUTE. [DSA-AC & HCD I-AC] A continuous unobstructed path connecting accessible elements and spaces of an accessible site, building or facility that is safe and accessible as provided in the provisions of this code. (begin strikeout) ~~and can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by persons with other disabilities.~~ (end strikeout) (begin underline) Where applicable, an accessible route shall not pass behind parking spaces other than to pass behind the parking space in which the user parked. (end underline) Interior accessible routes may include corridors, hallways, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.*

CBSC Criteria 6. The original definition that is in strike-out in the proposed code provided necessary specificity by defining access as compliance with codes, not a subjective term based on what makes a path "negotiable" which requires a subjective decision by enforcement authorities who do not have the knowledge to determine what "negotiable" for the diversity of the population who use wheelchairs and other assistive mobility devices. Without this definition, the proposed code change is **in conflict with BSC Criteria 6** because it creates code that is unnecessarily vague. (See below for further discussion of ambiguity and vagueness.)

CBSC Criteria 4: This proposed code change is also in conflict with BSC Criteria 4 in that it is unreasonable, arbitrary, unfair and capricious. It is unfair to all impacted by the code because enforcement can only be achieved with a subjective interpretation of what is negotiable and usable, without specificity currently provided in Chapter 11 which specifics minimum width, slope, surface conditions, maximum change in level and other conditions. It depends upon a capricious interpretation subject to an arbitrary determination of what is negotiable and usable without specific standards. The unreasonableness of the proposed code change will lead to unnecessary litigation for interpretation and enforcement.

CBSC Criteria 2: This proposed code change is also in conflict with BSC Criteria 2 because it is not within the parameters of the enabling legislation. It is a violation of Government Code 4459, which states, in part, "The State Architect shall develop amendments for building regulations and submit them to the California Building Standards Commission for adoption to ensure that no accessibility requirements of the California Building Standards Code shall be enhanced or diminished except as necessary for (1) retaining existing state regulations that provide greater accessibility and features, or (2) meeting federal minimum accessibility standards of the federal Americans with Disabilities Act of 1990 as adopted by the United States Department of Justice, the Uniform Federal Accessibility Standards, and the federal Architectural Barriers Act." The change of definition of "accessible" as a path that complies with codes, to an undefined notion of "negotiable" paths reliant upon subjective and ill-informed interpretation by enforcement authorities is a reduction in access and will lead to increased lawsuits. Without specificity and with reliance upon subjective enforcement, the code change appears to be an attempt to relieve owners from full compliance with accessible features of a path, and places the burden on the wheelchair user to define what he or she cannot negotiate in every path of travel in order to have a valid complaint. This definition of negotiable access is precisely what defendants argue to avoid liability for code violations. The purpose of the codes is to provide equality of access, not access by any means possible.

DSA's Statement of reasons says this code change is proposed "to carry forward the adoption of the 2013 CA Building Code definition of "accessible". Any definition which replaces a clear definition of what it means to provide "access" with a vague, subjective, undefined requirement of "negotiable" access does not meet the mandates of the California legislature which requires the State Architect to propose "regulations for making buildings....and related facilities accessible to and usable by persons with disabilities." Cal.Gov. Code 4450(b). The 2013 definition relating "accessible" to "negotiable" access fails to meet this mandate, and also violates the prohibition that "existing state regulations that provide great

accessibility and features" not be diminished, especially for lessor ADA standards.

The proposed code is in conflict with BSC Criteria 6 also because it is unnecessarily ambiguous and vague. The proposed definition, which only requires the path to be "negotiable" in a wheelchair, is ambiguous and unworkable. A path that is "negotiable" by one wheelchair user is not necessarily "negotiable" by another wheelchair user. For example, someone using a manual chair might not be able to "negotiate" a sudden change in level, though someone in a power chair might not. "Negotiability" is not defined and must rely upon subjective judgement to be accomplished, whereas Chapter 11 provides great detail and specificity as to how to achieve accessibility.

In addition, the definition should clarify that the route must be "safe" for all disabilities, and not – as currently specified – "all other disabilities" besides wheelchair users. The ambiguity of the proposed code change could lead to an interpretation the accessible route does not have to be safe for persons using wheelchairs, which would be in conflict with BSC Criteria 2 and 6, and GC 4459.

Government Code 11346.45 states, "(a) In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by Section 11346.5, involve parties who would be subject to the proposed regulations in public discussions regarding those proposed regulations, when the proposed regulations involve complex proposals or a large number of proposals that cannot easily be reviewed during the comment period."

DSA's failure to involve people with disabilities prior to the publication notice in a code change package that is almost 100 pages long clearly violates CA GC 11346.45. In particular, for a population that 1) has no professional interest in the code changes and therefore are not paid to

analyze building code, 2) who have been provided no training in the access codes and relevant civil rights laws that require an accessible built environment - which the state architect is legally required to provide - and 3) therefore, cannot adequately or easily review such complex and lengthy proposals during the comment period, the state architect has created a situation that not only violates CS GC 4450, 4459 and 11346.45, but has placed the disability community in a position of severe disadvantage in their ability to address code changes that impact their daily lives.

**CONCLUSION:** Because DSA violated Government Codes 4450, 11346.45 and 11346.5 by not providing public consideration of this code change prior to publication, Government 4459 by proposing a code change that decreases accessibility standards in California, , and by not meeting the CBSD Criteria 2, 4 and 6, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d). CA H&S 18930(d) states, "(a). Any factual determinations of the adopting agency or state agency that proposes the building standards shall be considered conclusive by the commission unless the commission specifically finds, and sets forth its reasoning in writing, that the factual determination is arbitrary and capricious or substantially unsupported by the evidence considered by the adopting agency or state agency that proposes the building standards."

**WHY THE TERM "NEGOTIABLE" WILL LEAD TO LAWSUITS:** The definition of "negotiation" is beyond vague and ambiguous. It implies a give and take that relates to the capabilities of an individual user on a particular day and in particular conditions.

In essence it's a defense attorney argument rather than a proper provision for inclusion in a building code. Defense attorney: "Well, even though the ramp was 10% your client has a motorized wheelchair, so they could negotiate it." Alternatively, another common defense argument is that by walking around with a level an expert was able to find a path with compliant slopes though the majority of a surface through which the alleged accessible route was designed was inaccessible.

On some days, a person might be able to "negotiate" a ramp that has a 9% slope. When that ramp has water on it negotiations might fail. Similarly, everybody, regardless of their level of ability, has good days and bad days. On some days they can "negotiate " barriers and on some days they can't. It's extremely hard to imagine how the term "negotiate" or "negotiated" can be seen as anything less than a degradation of the existing standards and in stark contrast to the requirements of the ADAS. No matter how you slice it, the concept of negotiation in connection with the interaction of a person with the built environment is an individualized issue. You can't write that into a building code. It doesn't even make logical sense.

When judges interpret a law they look first to the "black letter meaning" of words. In this case, that black letter reading of the word "negotiation" means that the proposed standard falls below both current code and the ADA as it allows discretion to construct a feature or features that don't meet code and the ADAS. In order to back this up, let's look at a few dictionary definitions.

Merriam-Webster (in its 3<sup>rd</sup> possible use of the word "negotiate") defines the word thusly:

- a* : to successfully travel along or over <*negotiate* a turn>
- b* : [complete](#), [accomplish](#) <*negotiate* the trip in two hours>

Macmillan Dictionary defines the word (listed as the 2<sup>nd</sup> use) as follows

[transitive] to successfully travel on a road or path that is difficult to travel on or travel through.

*"Only 4-wheel-drive vehicles can negotiate the rough roads around the ranch."*

In almost every definition one can find, the term implies the ability to deal with a problem, overcome an obstacle or handle a situation posed by a process involving some degree of skill given the existing conditions. Is the intent to allow each building official to determine what a person (whom he or she has never met) can "negotiate?" Let's look at it another way. Let's say that we are dealing with a person with no substantial limits on their abilities. As to that person, assuming the built environment is compliant and conditions are safe the word "negotiate" would only be applied to their interaction with the environment if used in a sarcastic fashion. "Wow, Bob was able to manage to negotiate exiting the parking lot at 3AM without hitting a post." "Despite those 3 glasses of Pinot, Jane was able to negotiate the width of the whole living room without tripping over the furniture."

Nobody should have to "negotiate" inaccessible conditions that violate the code. The term should:

1. Either be struck in its entirety; or
2. Added as a performance standard to clarify that, in addition to meeting all code requirements, surface conditions as well as other features (such as protruding objects) that are **adjacent to or connected with** an accessible route must be designed and constructed so that people can easily and intuitively negotiate the built environment and site without having to chart a path looking for an accessible route.

\* \* \*

We do not agree with SECTION 210

DEFINITIONS (begin underline) ***TECHNICALLY INFEASIBLE. [DSA-AC]*** *An alteration of a building or a facility, that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features that are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.* (end underline)

ACTION REQUESTED: We request that you send this section back for further study. DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

Reason: The proposed code change is in conflict with BSC Criteria 4 and 6. The phrase, "other existing physical or site constraints" is vague, without clear definitions, and requires subjective interpretation, in conflict with Criteria 6. To further clarify - "existing physical or site constraints" could be interpreted as whatever the building owner does not want to modify. Because of its subjective nature, it is likely to cause "unreasonable, arbitrary, unfair, or capricious" interpretations, in conflict with Criteria 4.

In addition, this code change was proposed without adequate input from the community. Please see Government Code 4450 and 11346.45 as discussed above.

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## **ITEM 9.01**

### **SECTION 907**

#### **FIRE ALARM AND DETECTION SYSTEMS**

##### **907.4.2 Manual fire alarm boxes.**

**907.4.2.2 Height.** The height of the manual fire alarm boxes shall be not less than 42 inches (1067 mm) and not more than 48

inches (~~1372~~ 1219 mm) measured vertically, from the floor level to the *highest point of the* activating handle or lever of the box. (begin underline)Manual fire alarm boxes shall also comply with Section 11B-309.4.

**Exception: [DSA-AC] In existing buildings there is no requirement to retroactively relocate existing manual fire alarm boxes to a minimum of 42 inches (1067 mm) and a maximum of 48 inches (1219 mm) from the floor level to the activating handle or lever of the box. (end underline)**

ACTION REQUESTED: We do not agree with the exception and request that the commission deny this code change proposal. It is a violation of the requirement of Title III of the Americans with Disabilities Act which requires barrier removal where it is readily achievable to do so in existing construction and a violation of Title II of the ADA which required access to programs and local and state governments.

Therefore, the proposed exception is in **conflict with CBSD Criteria 1** which because it conflicts with other standards. It is in **conflict with CBSC Criteria 2** because it conflicts with enabling legislation which requires compliance with the ADA. It is in conflict with **CBSC Criteria 3** because it is not in the public interest to make a safety feature inaccessible to members of the public. It is in conflict with **CBSC Criteria 4** because is a capricious endangerment of the public and an arbitrary requirement that puts enforcement officials and building owners in the position of violating Federal law. It is in conflict with CBSC Criteria 7 because it does not incorporate applicable national standards.

CONCLUSION: Because DSA violated Government Codes 4450 11346.45 and 11346.5 by not providing public consideration of this code change prior to publication, Government 4459 by proposing a code change that decreases accessibility standards in California, , and by not meeting the CBSD Criteria 1, 2, 3, 4 and 7, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

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TEM 11B.02  
DIVISION 2: SCOPING REQUIREMENTS  
11B-202 Existing buildings and facilities

11B-202.4 Path of travel requirements in alterations, additions and structural repairs. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

Exceptions:

(begin underline) 10. The cost of compliance with Section 11B-202.4 for seismic mitigation projects shall be limited to 20 percent of the adjusted construction cost. For the purposes of this exception the adjusted construction cost of a seismic mitigation project shall not include the cost of alterations to path of travel elements required to comply with Section 11B-202.4. When the path of travel elements for a seismic mitigation project cannot be fully upgraded to comply with 11B-202.4 within the 20 percent cost limitation, the priority list of Exception 8 shall be applied. (end underline)

**ACTION REQUESTED:** We do not agree with this code change and request that the commission deny this code change because it is a reduction in access which is precluded by Government Code 4459. See the discussion above. Currently, only for those alteration projects which exceed the current value of \$50,000 based upon the 1981 Engineering News Record and if there is a determination of "unreasonable hardship," as defined, may the cost for compliance with accessibility in the area of remodel or the path-of-travel requirements be limited to 20% of construction costs.

This code change is in conflict with **CBSC Criteria 2** because it conflicts with GC 4459. It is in conflict with **CBSC Criteria 3** because it is not in the interest of public, of which the disabled public is part, and because the

code change will limit access to the built environment by the disabled public. It is in conflict **with CBSD Criteria 4** because it is an unreasonable, arbitrary, unfair and capricious reduction in accessibility, giving weight only to the monetary concerns of building owners and violating CA laws protecting people with disabilities against discrimination.

In addition, DSA's failure to provide public participation prior to the notice required by GC 11346.5 is a violation of GC 11346.45.

We recommend that this code change be amended, as follows: ITEM 11B.02

DIVISION 2: SCOPING REQUIREMENTS

11B-202 Existing buildings and facilities

11B-202.4 Path of travel requirements in alterations, additions (begin  
strikeout) ~~and~~ (end strikeout), structural repairs (begin underline) and  
seismic mitigation projects (end underline). When alterations or additions  
are made to existing buildings or facilities, an accessible path of travel to  
the specific area of alteration or addition shall be provided. The primary  
accessible path of travel shall include . . . .

CONCLUSION: Because DSA violated Government Codes 4450 11346.45  
and 11346.5 by not providing public consideration of this code change  
prior to publication, Government 4459 by proposing a code change that  
decreases accessibility standards in California, and by not meeting the  
CBSD Criteria 2, 3 and 4, it should be concluded by the Commission that  
DSA's factual determinations were arbitrary and capricious and the  
determinations were substantially unsupported by the evidence considered  
by the adopting agency, as specified in CA Health and Safety Code  
18930(d).

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11B-220.2 Point-of-sale devices. Where point-of-sale devices are provided,  
all devices at each location shall comply with Sections (begin  
strikeout) ~~11B-309.4~~, (end strikeout) 11B-707.3, (begin strikeout) ~~and~~ (end  
strikeout) 11B-707.7.2, (begin underline) and 11B-707.9 (end underline)

(begin strikeout) In addition, point-of-sale systems that include a video touch screen or any other non-tactile keypad shall comply with either Section ~~11B-707.9.1.1~~ or ~~11B-707.9.1.2~~. (end strikeout) Where point-of-sale devices are provided at check stands and sales and service counters (begin underline) required to be accessible, (end underline) they shall comply with (begin strikeout) Section (end strikeout) (begin underline) Sections 11B-707.2, 11B-707.3, 11B-707.7.2, and 11B-707.9. (end underline) (begin strikeout) ~~11B-707.9.1~~, and shall also comply with Sections ~~11B-707.2, 11B-707.3 and 11B-707.4~~. (end strikeout)

Exception: Where a single point-of-sale device is installed for use with any type of motor fuel, it shall comply with Sections (begin strikeout) ~~11B-220.2 and 11B-309~~ (end strikeout) (begin underline) 11B-707.2, 11B-707.3, 11B-707.7.2, and 11B-707.9. (end underline)

Where more than one point-of-sale device is installed for use in a specific type of motor fuel, a minimum of two for that type shall comply with Sections (begin strikeout) ~~11B-220.2 and 11B-309~~ (end strikeout) (begin underline) 11B-707.2 and 11B-702.9 (end underline). Types of motor fuel vehicles include gasoline, diesel, compressed natural gas, methane, ethanol and electricity.

We do not agree with this proposed code change and request that the commission send it back for further study. This section conflicts with other proposed code changes regarding EVCS which require a point of sales device for each accessible EVCS. The requirement for accessible EVCS requires accessibility for point of sales devices regardless of the number of point-of-sale devices provided. This proposed code change is in conflict with BSC Criteria 1 because it conflicts with other proposed code changes for EVCS and Criteria 4, because such a conflict is unreasonable and capricious.

CONCLUSION: Because does not meet the CBSD Criteria 1 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially

unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

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(begin underline) 11B-812.5.4 Arrangement. Vehicle spaces and access aisles shall be designed so that persons using them are not required to travel behind vehicle spaces or parking spaces other than the vehicle space in which their vehicle has been left to charge.

Exceptions:

1. Ambulatory EVCS shall not be required to comply with Section 11B-812.5.4.

2. Vehicle spaces installed in existing facilities shall comply with Section 11B-812.5.4 to the maximum extent feasible. (end underline)

We are opposed to this code change and request that the committee send it back for further study. Exception 2 is in conflict with CBSC Criteria 4. Without providing specificity for the determination of the phrase, "to the maximum extent feasible," the code change invites capricious and arbitrary enforcement that can lead to an unreasonable denial of accessibility. It is also a violation of CBSC Criteria 6, in that without such specificity for determining the exception, it is vague and ambiguous.

CONCLUSION: Because DSA violated does not meet the CBSD Criteria 2, 4 and 6, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

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## **11B-202 Existing buildings and facilities**

**11B-202.4 Path of travel requirements in alterations, additions and structural repairs.** *When alterations or additions are made to existing*

*buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:*

1. . . . .

**(begin underline) Exceptions: ...**

11. Alterations solely for the purpose of installing electric vehicle charging stations (EVCS) at facilities where vehicle fueling, recharging, parking or storage is a primary function shall comply with Section 11B-202.4 to the maximum extent feasible without exceeding 20 percent of the cost of the work directly associated with the installation of EVCS.

Alterations solely for the purpose of installing EVCS at facilities where vehicle fueling, recharging, parking or storage is not a primary function shall not be required to comply with Section 11B-202.4. (end underline)

We do not agree with this code change and request that the commission deny this code change. It is a reduction in access which is precluded by Government Code 4459. See the discussion above. Currently, only for those alteration projects which exceed the current value of \$50,000 based upon the 1981 Engineering News Record and if there is a determination of "unreasonable hardship," as defined, may the cost for compliance with accessibility in the area of remodel or the path-of-travel requirements be limited to 20% of construction costs.

This proposed code is in conflict with **CBSC Criteria 1** in that it conflicts with other standards. Turning regular parking spaces into EVCS is a change-in-use, and therefore, is not a remodeling project, but a new construction project. The exceptions for remodeling cannot apply.

This code is in conflict with **CBSC Criteria 3** because it is not in the interest of public, of which the disabled public is part, and because the code change will limit access to the built environment by the disabled public. It is in conflict **with CBSD Criteria 4** because it is an unreasonable, arbitrary, unfair and capricious reduction in accessibility, giving weight only to the monetary concerns of building owners and violating Federal and CA laws

protecting people with disabilities against discrimination. In fact, code change 11B-208.1 states, "*For the purposes of this section, electric vehicle charging stations are not parking spaces; see Section 11B-228.*" If EVCS are not parking spaces, then it is capricious, arbitrary and unreasonable to provide remodeling exceptions for installing EVCS in parking spaces.

CONCLUSION: Because DSA does not meet the CBSD Criteria 1, 3 and 4, it should be concluded by the Commission that DSA's factual determinations were arbitrary and capricious and the determinations were substantially unsupported by the evidence considered by the adopting agency, as specified in CA Health and Safety Code 18930(d).

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## **ITEM 11B.51.04 – RELATED CODE AMENDMENT**

### **CHAPTER 11B**

#### **DIVISION 2: SCOPING**

#### **11B-208 Parking spaces**

**11B-208.1 General. Where parking spaces are provided, parking spaces shall be provided in**

**accordance with Section 11B-208. (begin underline) For the purposes of this section, electric vehicle charging stations are not parking spaces; see Section 11B-228. (end underline)**

**Exception: ...**

#### **ITEM 11B.**

We do not agree with this code change and request that the commission deny this code change because it in conflict with BSC Criteria 2 in that it is a violation of BC 4459, as a diminishment of access standards. It is also in conflict with BSC Criteria 3 in that it is not in the best interest of the public to make such a ridiculous statement in code. It is in violation BSC 4 in that it is "unreasonable, arbitrary, unfair, and capricious." To say that when someone parks a vehicle in a parking lot in a space that is marked for vehicles, locks the vehicle and leaves, that the space where the vehicle is

parked is not a parking space is beyond ludicrous. It is a blatant attempt to exempt EVCS parking from parking requirements, and leaves DSA and the BSC open for litigation. Such a case might be accepted by the courts if only for comic relief.

**We recommend the following revisions:** 11B-208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with Section 11B-208. (begin underline) For the purposes of this section, parking for electric vehicle charging stations shall comply with Sections 812 and Section 11B-228. (end underline)

Exception: ...

ITEM 11B.02.01 – RELATED

**11B-608 Shower compartment**

**11B-608.6 Shower spray unit and water.** A shower spray unit with a hose 59 inches (1499mm) long minimum that can be used both as a fixed-position shower head and as a hand-held shower shall be provided. The shower spray unit shall have an on/off control with a non-positive shut-off. If an adjustable height shower head on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars. Shower spray units shall deliver water that is 120°F (49°C) maximum.

**Exception:** *Where subject to excessive vandalism, two fixed shower heads shall be (begin strikeout) ~~installed~~ (end strikeout) (begin underline) permitted (end underline) instead of a hand-held spray unit in facilities that are not (begin underline) medical care facilities, long-term care facilities, (end underline) transient lodging guest rooms, (begin underline) or residential dwelling units. (end underline) *Each shower head shall be installed so it can be operated independently of the other and shall have swivel angle adjustments, both vertically and horizontally.* (begin underline) One shower head shall be located at a height of 48 inches (1219 mm) maximum above the shower finish floor. (end underline)*

ACTION REQUESTED: We do not agree with this code change and request that it be sent back for further study because it is in conflict with BSC Criteria 4 in that it arbitrarily, unreasonably, unfairly and capriciously endangers the disabled public. Persons with disabilities will be forced to sit in unhealthy temperatures or hot or cold water until the water temperature can be adjusted.

Further study should provide standards as to the placement of the lower shower head so that people with disabilities can reach the controls to adjust the water temperature before transferring to the bench in front of the shower head. It cannot be assumed that any existing shower compartment configuration allows people with mobility disabilities to have access to the shower controls without actually having transferred to the shower bench.

Standards for this proposed code change should include placement of controls so that they are within reach of someone sitting or standing outside of the shower area, and should provide a clear floor space and reach range requirements to facilitate this.

Sincerely,

CONNIE ARNOLD

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