

Dear California Building Standards Commissioners:

Please consider these further comment on the DSA 45-day language submission:

11B-812.8 Identification signs. EVCS identification signs shall be provided in compliance with Section 11B-812.8.

11B-812.8.1 Four or fewer. Where four or fewer total EVCS are provided, identification with an International Symbol of Accessibility (ISA) shall not be required.

11B-812.8.2 Five to twenty-five. Where five to twenty-five total EVCS are provided, one van accessible EVCS shall be identified by an ISA complying with Section 11B-703.7.2.1. The required standard accessible EVCS shall not be required to be identified with an ISA.

11B-812.8.3 Twenty-six or more. Where twenty-six or more total EVCS are provided, all required van accessible and all required standard accessible EVCS shall be identified by an ISA complying with Section 11B-703.7.2.1.

ACTION REQUESTED: We strongly oppose these sections because the first four EVCS will not have an International Symbol of Accessibility (ISA) and because there are no signs enforcing that any of the accessible parking spaces (accessible by size, arrangement, etc.) are for the exclusive use of persons using the appropriate placard and license plates, with enforcement clearly defined. We ask that the Commission send these code sections back for further study.

These sections, are supported by the careful work of the state architect to declare that parking a vehicle for charging purposes is not parking. See 11B-208.1 and Section 2 definitions for Electric Vehicle Charging Space and Electric Vehicle Charging Station, which carefully leave out the word "parking" when defining a "vehicle space."

The proposed definition for drive-up charging stations in Section 2 carefully defines "Drive-Up Electric Vehicle Charging Station "where use is limited to 30 minutes maximum. . . ." in order to differentiate a "Drive-Up" space from a space where the vehicle stays in the electric vehicle parking space for more than 30 minutes. So, obviously, the state architect knows that EVCS will require parking the EV in the charging parking space for longer than 30

minutes, which makes those spaces parking space. The occupants will leave the vehicle "parked" and unattended for the duration of the charging.

Because anyone will be able to use accessible spaces, which have the ISA but no signs that the EVCS parking spaces are for the exclusive use of those with appropriate placards, then the general public will have access to all the spaces available, but people with disabilities will have access to less than one. This is clear discrimination.

To say that a parking space where the occupants lock and leave the vehicle is not parking is an obvious effort by the state architect to discriminate against people with disabilities. The state architect's dance of words will be challenged in court and at great play will be the *Donald v. Sacramento Merchant Bank* decision which held that ATMs had to be accessible even though standards at that time did not address ATMs. The judge ruled "we believe the absence of any express reference to ATM's in the 1961 ASA standards does not render the general standards inapplicable."

The same applies to EV charging stations. There is nothing unique about EV charging station parking spaces that is not already covered by specific access requirements and standards for parking, including accessible routes, reach ranges, clear floor space, operating controls, and signs, including the ISA and signs enforcing that the spaces are for the exclusive use of persons using the appropriate placard and license plates, with enforcement clearly defined.

In fact, the proposed standards for EVCS rely on the extant parking requirements for all but the parking signage requirements. What the state architect has done is use existing parking requirements but eliminated the essential sign elements in order to create standards for EVCS that discriminate against people with disabilities.

Also, the case of *Barden v. City of Sacramento*, 292 F.3d 1073, requires that Sacramento make sidewalks accessible when installing curb ramps. "The ADA's broad language has been construed as bringing within its scope anything a public entity does." The ADA must be construed broadly in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.

The fact is that electric vehicle charging stations are public accommodation facilities, which make them subject to, among others, CA Gov Code 4450, 4451, and 4452, H&S code 19955, the Unruh Act, as well as Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, all of which prohibit discrimination against people with disabilities. To provide standards which require accessible parking spaces for electric vehicle charging, but which allow the general population to use those spaces, while people with disabilities cannot use inaccessible parking spaces is clear discrimination against people with disabilities.

Moreover, the standard of proving a minimum number of accessible parking spaces for the exclusive use by people with disabilities is long-standing and establishes a precedent for accommodation in the public environment that has been upheld by many court decisions. The state architect is inviting not only many court challenges, but is working to establish a precedent to degrade other standards for accessibility.

We can anticipate many technological changes which will be require accessibility standards. The state architect is trying to set the stage so that the state architect's office and other access code writing departments and agencies can justify discriminatory code for any new technology in the built environment. On all accounts, the state architect is acting in clear violation of CA Government Code 4459 which prohibits any decrease in the access standards.

For these reasons, it is clear that these proposed code changes are in conflict with CBSC Criteria 2 as they are in conflict with CA Gov Code 4450, 4451, and 4452, H&S code 19955, the Unruh Act, as well as Section 504 of the 1973 Rehabilitation Act and the Americans with Disabilities Act, all of which prohibit discrimination against people with disabilities. In addition, the proposed codes are in conflict with CBSC Criteria 3, being against the public interest, which includes the interest of persons with disabilities, and Criteria 4, being unreasonably unfair to people with disabilities, arbitrarily discriminatory and creating a new area of discrimination in conflict with Federal and state laws and standards established for the last half century. In addition, the proposed standards are capricious, flying the face of long established standards for "vehicle spaces." with no justification provided to explain the elimination of exclusive use by people with disabilities of only 4% of total facilities provided. That

the proposed standards are unfair to a large segment of the population is clear and has been thorough discussed in this commentary.

CONCLUSION: Because DSA is violating Government 4459 by proposing a code change that decreases accessibility standards and creates a discriminatory precedent for new technologies used by the public 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). 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."

FURTHER CONSLUSION: We are very concerned that by ignoring the 1.5 years of participation in the development of the EVCS standards, the state architect has betrayed public trust, and made a mockery of the enabling legislation for his office, CA GC 4450, which requires input from the disability community. The result of the 1.5 years of work by volunteers chosen by the disability community to represent them in the study and provision of recommendations to the state architect was a compromise among the parties, and should have been honored by the state architect. That he has failed to honor the work of 1.5 years exposes the access code writing system for a sham that ignores and damages at will the people whose daily lives re directly impacted. We ask that the Commissioners direct the state architect to act with honor and integrity and to stop his discriminatory and abusive practices against the disability population in California.

RECOMMENDATION: We strongly suggest that to be truly forward thinking, given the rising increase in the senior population, the state architect should be directed to develop universal design standards for EVCS. The technology for electric vehicles and charging systems is developing so rapidly that the state architect's illegal and prejudicial proposed EVCS code will ultimately work against the general population.

Thank you for your consideration.

Sincerely,

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