

**FINAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
DIVISION OF THE STATE ARCHITECT – ACCESS COMPLIANCE
REGARDING THE 2010 CALIFORNIA BUILDING CODE (CBC)
CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 24, PART 2**

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a final statement of reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS

NONE - DSA-AC is relying on the Initial Statement of Reasons regarding the specific adoption, amendments, or repeal to CCR, Title 24, Part 2. This proposed action by the DSA-AC adopts amends or repeals provisions of the 2010 California Building Code (CBC). DSA-AC further proposes to adopt USDOJ Americans with Disabilities Act (ADA) Certification related accessibility standards. These proposed amendments are intended to provide clarity, specificity and direction to the code user and to implement and make specific existing state laws. These proposed amendments are a result of recommendations for amendment developed during the public participation period prior to submittal to the California Building Standards Commission (CBSC).

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

NONE - The DSA-AC has determined that the proposed regulatory action WOULD NOT impose a mandate on local agencies or school districts regarding the specific adoption, amendments, or repeal to CCR, Title 24, Part 2. The DSA-AC finds that the mandate IS NOT reimbursable. The proposed action would ensure that the State Architect's regulations and building standards published in CCR, Title 24, Part 2, would not prescribe a lesser standard of accessibility or usability than provided by the Federal Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336), consistent with GC§ 4450(c).

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S)

NONE. DSA-AC did not receive any objections or recommendations regarding the specific adoptions, amendments, or repeals to CCR, Title 24, Part 2 except from three commenters as follows:

Name: Eugene Lozano, Jr.
Representing: California Council of the Blind
Address: 4537 Sycamore Avenue, Sacramento, CA 95841

Name: Sean Rashkis
Representing: Disability Rights California
Address: 100 Howe Avenue, Suite 235N, Sacramento, CA 95825

Name: Susan Chandler
Representing: UKN
Address: 1193 17th Street, Los Osos, CA 93492

(See below for DSA-AC response to recommendations.)

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

NONE - The DSA-AC has determined that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. The proposed action would ensure that the State Architect's

regulations and electrical standards published in CCR, Title 24, Part 2, would not prescribe a lesser standard of accessibility or usability than provided by the Federal Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336), consistent with GC§ 4450(c).

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

NONE - DSA-AC did not receive any alternatives or recommendations that would lessen any adverse economic impact on small businesses, regarding the specific adoption, amendments, or repeal to CCR, Title 24, Part 2.

CHAPTER 2 – DEFINITIONS

ITEM 1, SECTION 202-DEFINITIONS

EUGENE LOZANO, JR. –

SUMMARY OF COMMENT – Commenter indicates support of the proposed amendment and recommends approval.

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter indicates he is unclear whether the US DOJ's October 1, 2004 concerns about the definition of *ACCESSIBLE ROUTE* have been addressed.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: In their October 1, 2004 letter to the Division of the State Architect, the US DOJ indicated the DSA's proposed revision to the definition of *ACCESSIBLE ROUTE* limits the application of the definition to a "person with a severe disability using a wheelchair" and recommended: "DSA should delete the word 'severe' from its definition of accessible route." During the 2006 Rulemaking cycle, DSA-AC proposed, and BSC approved, changes to the definition of *ACCESSIBLE ROUTE OF TRAVEL* to delete the word *severe* and add new language consistent with the proposed revisions submitted to the US DOJ in DSA's 2002 side-by-side analysis of the CBC and the ADA Standards for Accessible Design.

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter indicates he is unclear whether the US DOJ's October 1, 2004 concerns about the definition of *ALTERATION* have been addressed.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: In their October 1, 2004 letter to the Division of the State Architect, the US DOJ indicated the DSA's proposed revision to the definition should include ADA examples of alterations: remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. US DOJ also stated DSA should delete the phrase "other than repair or addition" from

the definition. During the 2006 Rulemaking cycle, DSA-AC proposed, and BSC approved, changes to the definition of *ALTERATION* responsive to these US DOJ comments.

**CHAPTER 11B – ACCESSIBILITY TO PUBLIC BUILDINGS, PUBLIC ACCOMMODATIONS,
COMMERCIAL BUILDINGS AND PUBLICLY FUNDED HOUSING**

ITEM 3, SECTION 1102B-DEFINITIONS

EUGENE LOZANO, JR. –

SUMMARY OF COMMENT – Commenter indicates support of the proposed amendment and recommends approval.

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests revising the definition of *POINT-OF-SALE DEVICE* to include devices used for the purchase of a good or service where a zip code is required, in addition to the previously proposed criteria for personal identification number and signature.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is revising the proposed definition of *POINT-OF-SALE DEVICE* to include the commenter's suggestion.

DSA-AC REASON(S) FOR MAKING NO CHANGE: None.

ITEM 4, SECTION 1104B.3.9-DESIGNATED AISLE SEATS

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests revising this item to require designated aisle seats are located closest to accessible aisles and designated aisle seats are identified with signs that contrast and are photo-luminescent per the 2010 ADA Standards for Accessible Design.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain the balance of this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Upon review of the 2010 ADA Standards, DSA-AC notes seat location closest to accessible routes (§221.4) is required, while contrasting and photo-luminescent identification signs (Advisory §802.4.2) are indicated in advisory text which do not establish enforceable requirements. DSA-AC's current proposal for this item includes the requirement that designated aisle seats be located closest to accessible routes.

ITEM 6, SECTION 1106B.4, ITEM 4-ACCESSIBILITY FOR GROUP E OCCUPANCIES

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests minimum clear aisle space and maximum reach heights should be clearly indicated for both adults and children in order to prevent confusion.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Upon review of the 2010 ADA Standards, DSA-AC notes the requirements for clear aisle space, more specifically accessible routes, does not indicate an alternative width for children; guidance on alternative maximum reach heights for children is indicated in Advisory §308.1 – advisory text does not establish enforceable requirements.

ITEM 11, SECTION 1117B.7.1, EXCEPTION 1-GENERAL

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests revising Exception 1 to clarify unreasonable hardship only applies to alterations; commenter references October 1, 2004 US Department of Justice letter in support.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC intends to address this issue in the next regular rulemaking when the primary concern will be incorporating provisions of the new federal standards.

DSA-AC REASON(S) FOR MAKING NO CHANGE: DSA-AC has not proposed changes to the requirements of this exception, only to the exception number. As such, the commenter's suggestion is not substantially related to DSA-AC's original proposal.

Item 11, Section 1117B.7.1, Exception 2-General

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests deleting Exception 2 because legal constraints are not a basis for exception from the requirements of the ADA; commenter references October 1, 2004 US Department of Justice letter in support.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC intends to address this issue in the next regular rulemaking when the primary concern will be incorporating provisions of the new federal standards.

DSA-AC REASON(S) FOR MAKING NO CHANGE: DSA-AC has not proposed changes to the requirements of this exception, only to the exception number. As such, the commenter's suggestion is not substantially related to DSA-AC's original proposal.

ITEM 11, SECTION 1117B.7.1.3-POINT-OF-SALE DEVICES

EUGENE LOZANO, JR. –

SUMMARY OF COMMENT – Commenter indicates support of the proposed amendment and recommends approval with amendments indicated. Commenter suggests amending proposed language to provide standardization of features/controls among point-of-sale devices regardless of location.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is revising referenced requirements in Section 1117B.7.1.3 to require all newly installed and replaced point-of-sale devices be operable with one hand without tight grasping, pinching, or twisting of the wrist (reference 1117B.6 Item 4); provided with operable parts differentiated by sound or touch without activation unless a clear or correct key is provided (reference 1117B.7.3.1); provided with on-screen characters 3/16 inch high, sans serif font, and contrast with the background – light-on-dark or dark-on-light (reference 1117B.7.7.2); and provided with a tactually discernible numerical keypad which enables processing the transaction with the same degree of privacy input or output available to all individuals, or other technology with the same privacy requirements (reference 1117B.7.9). DSA-AC is also revising referenced requirements in Section 1117B.7.1.3 to require point-of-sale devices located at accessible checkstands, sales or service counters need to comply with all of the above requirements and additionally provide clear floor space, accessible route, and accessible ground or floor surface (reference 1117B.7.2 and 1118B.4); accessible reach ranges (reference 1117B.7.3 and 1117B.6); and the same degree of privacy available to all individuals (reference 1117B.7.4). Exceptions are provided for devices at drive-up locations.

While the commenter's original comments on this item called for identical requirements for point-of-sale devices regardless of location, subsequent conversations with the commenter discussed those aspects of these devices which could be standardized – controls and interface, and those aspects which could be differentiated for the usability of people with mobility impairments.– clear floor space, accessible route, and mounting height. Commenter agreed this scheme would serve the needs of people with visual and mobility impairments at a variety of locations where point-of-sale devices are installed.

DSA-AC REASON(S) FOR MAKING NO CHANGE: None.

EUGENE LOZANO, JR. –

SUMMARY OF COMMENT – During the 15-day comment period, commenter suggested additional amendments to proposed Section 1117B.7.3.1 to require point of sale machine buttons be discernible by touch and that confirmation of locating these buttons be provided by sound. This would provide accessibility to point-of-sale machine buttons to users with a visual impairment and associated functional limitations (e.g. hearing and tactile sensation loss).

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Because this comment was received during 15-day comment period, DSA-AC is concerned manufacturers of point-of-sale devices and other stakeholders will not have had an adequate opportunity to review and comment upon a significant, revised code change proposal.

SUSAN CHANDLER –

SUMMARY OF COMMENT – Commenter indicates support for the revised code change proposal and appears to request a change to require point-of-sale device displays be required to tilt to accommodate users of various height.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Because this comment was received during 15-day comment period, DSA-AC is concerned manufacturers of point-of-sale devices and other stakeholders will not have had an adequate opportunity to review and comment upon a significant, revised code change proposal.

ITEM 11, SECTION 1117B.7.4-PRIVACY

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending proposed language to require machines and devices with visible screens have the capacity to allow users to make the screens go blank while in use; this would help protect the privacy of persons with visual impairments. Commenter references 2010 ADA Standards Advisory §707.4 in support.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Upon review of the 2010 ADA Standards, DSA-AC notes guidance on making the screens of ATMs and Point-of-Sale devices go blank is indicated in Advisory §707.4 – advisory text does not establish enforceable requirements.

ITEM 11, SECTION 1117B.7.5-SPEECH OUTPUT

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending proposed language to require ATM machines which provide extra functions, such as selling theater tickets, to be available using speech output and not require specialized training. Commenter references 2010 ADA Standards Advisory §707.5 in support.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: DSA-AC notes that advisory text does not establish enforceable requirements.

ITEM 11, SECTION 1117B.7.9-POINT-OF-SALE DEVICES

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending proposed language to be consistent with California Financial Code (CA FC) §13082, (b)-(d). In total, CA FC §13082 requires point-of-sale devices which include, or are modified to include, video touch screens or

non-tactile keypads also be provided with tactually discernible numerical keypad or other technology which enables a visually impaired person to process his or her transaction with the same degree of privacy available to all individuals. §13082(a) provides technical details regarding the tactually discernible keypad or other technology; §13082(b) identifies the date by which existing point-of-sale devices are required to be equipped with tactually discernible keypads or other devices; §13082(c) identifies the date by which manufacturers / distributors are required to offer point-of-sale devices equipped with tactually discernible keypads or other technology, and; §13082(d) defines “point-of-sale device.”

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: DSA-AC notes the intent of Items 3 and 11 of this rulemaking package is to incorporate applicable statutory requirements from CA FC §13082 into the CBC. Proposed CBC Sections 1117B.7.1 and 1117B.7.1.3 establish scoping and the applicable technical requirements for point-of-sale devices consistent with CA FC §13082. The provisions of CA FC §13082(a) are reflected in proposed CBC Sections 1117B.7.1.3 and 1117B.7.9. §13082(b) establishes the statutorily-required date by which existing point-of-sale devices are required to be equipped with tactually discernible keypads or other devices as January 1, 2010 – prior to the effective date of the Items 3 and 11 of this rulemaking package, rendering additional building code distinction of this date moot. §13082(c) establishes the statutorily-required date by which manufacturers / distributors are required to offer point-of-sale devices equipped with tactually discernible keypads or other technology; this statutory requirement is inappropriate for inclusion within the building code as it bears upon the manufacture of point-of-sale devices which may or may not be installed in buildings; when installed as part of a building or facility, the technical requirements of CA FC §13082(a) must be met. §13082(d) states: “As used in this section, ‘point-of-sale device’ includes any device used by a customer for the purchase of a good or service where a personal identification number (PIN) is required, but does not include the following:(1) An automated teller machine as defined in subdivision (c) of Section 13020. (2) A point-of-sale device that is equipped to, or exclusively services, motor fuel dispensers.” The initial part of this definition is incorporated into the proposed definition of “point-of-sale device” in Item 3 of this rulemaking package; the exclusion of automated teller machines is effected by the separate definition, scoping, and technical requirements for automated teller machines shown in Items 3 and 11 of this rulemaking package; the exclusion of point-of-sale devices at motor fuel dispensers is reflected in proposed CBC Section 1117B.7.1 Exception 3 which indicates: “Card reading devices located on fuel pump islands at gasoline service stations and motor-vehicle fuel facilities shall comply with the requirements of Chapter 11C.”

ITEMS 13 & 14, SECTION 1118B-SPACE ALLOWANCE AND REACH RANGES

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter states minimum clear aisle space and maximum reach heights should be clearly indicated for both adults and children in order to prevent confusion.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: Upon review of the 2010 ADA Standards, DSA-AC notes the requirements for clear aisle space, more specifically accessible routes, does not indicate an alternative width for children; guidance on alternative maximum reach heights for children is indicated in Advisory §308.1 – advisory text does not establish enforceable requirements.

Item 16, Section 1129B.1-General

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending this section, consistent with the 2010 ADA Standards §208.3, to require accessible parking spaces to be located on the shortest accessible route from the parking area to the entrance of the building.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: DSA-AC notes existing language in CBC Section 1129B.1 requires: “Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel (complying with Section 1114B.1.2) from adjacent parking to an accessible entrance.”

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending this section to include parking requirements for hospitals and other facilities consistent with the 2010 ADA Standards §§208.2.1-208.2.3.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: 2010 ADA Standards §208.2.1 requires 10% of patient and visitor parking spaces at hospital outpatient facilities be accessible and §208.2.2 requires 20% of patient and visitor parking spaces at rehabilitation facilities specializing in treating conditions that affect mobility and outpatient physical therapy facilities be accessible; DSA-AC believes existing requirements of CBC Section 1129B.2 Items 1 and 2 generally address these federal requirements. 2010 ADA Standards §208.2.3 provides requirements for parking at residential facilities which are public accommodations; though the 2010 CBC does not adequately address this requirement, commenter’s suggestion is not substantially related to DSA-AC’s original proposal.

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending the heading of the first column of the table to read “TOTAL NUMBER OF PARKING SPACES IN PARKING FACILITY, consistent with the 2010 ADA Standards Advisory §208.2.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: 2010 ADA Standards Advisory §208.2 indicates use of the term “PARKING FACILITY” instead of the term “PARKING LOT” (as is indicated in the 1991 ADA Standards) so that it is clear that both parking lots and parking structures are required to comply with this section. DSA-AC notes the existing heading of the first column in CBC Table 11B-6 is “TOTAL NUMBER OF PARKING SPACES IN A LOT OR GARAGE” and believes this heading adequately indicates that both parking lots and parking structures are required to comply with this section.

ITEM 16, SECTION 1129B.3 ITEM 2-VAN SPACES

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests incorporating the van accessible parking ratio of the 2010 ADA Standards.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: The 2010 CBC requires provision of at least one van-accessible parking space for each eight required accessible spaces; this differs from the revised federal requirements indicated in the 2010 ADA Standards §208.2.4 which require at least one van-accessible parking space for each six or fraction of six required accessible spaces. DSA-AC intends to address this issue in the next regular rulemaking when the primary concern will be incorporating provisions of the new federal standards.

ITEM 21, SECTION 1133B.4-STAIRWAYS

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending DSA-AC proposal to include requirements regarding obstructions at handrails indicated in the 2010 ADA Standards.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment.

DSA-AC REASON(S) FOR MAKING NO CHANGE: §505.6 of the federal standards requires handrail gripping surfaces be continuous along their length and not obstructed on the tops or sides, the bottom of the handrail may not be obstructed for more than 20% of its length, and any horizontal projections must be a minimum of 1½ inches below the bottom of the handrail gripping surface; an exception is provided allowing obstruction along the entire length for handrails at walking surfaces with a slope less than 1:20 where the handrail gripping surface is integral to crash rails or bumper guards; a second exception is provided which allows the distance between horizontal projections and the bottom of the gripping surface to be reduced by 1/8 inch for each ½ inch of additional handrail perimeter dimension that exceeds 4 inches. DSA-AC intends to address this issue in the next regular rulemaking when the primary concern will be incorporating provisions of the new federal standards.

ITEM 21, SECTION 1133B.4.2.1-HANDRAIL CONFIGURATION

SEAN RASHKIS -

SUMMARY OF COMMENT – Commenter suggests amending DSA-AC proposal to include walking surfaces, stair nosings, and ramp surfaces consistent with 2010 ADA Standards §505.4.

DSA-AC CHANGE(S) TO ACCOMMODATE: DSA-AC is not proposing changes to its 2010 code change proposal in response to the comment. DSA-AC will retain this comment for consideration during a future rulemaking cycle.

DSA-AC REASON(S) FOR MAKING NO CHANGE: §505.4 of the federal standards requires handrails be mounted at 34 inches minimum to 38 inches maximum, and at a consistent height, above walking surfaces, stair nosings, and ramp surfaces. DSA-AC notes existing language in 2010 CBC Sections 1133B.4.2.1 and 1133B.5.5.1 require handrails be mounted at 34 inches minimum to 38 inches maximum above stair nosings and ramp surfaces, respectively. Though the balance of the commenter's suggestion addressing handrails at pedestrian walking surfaces is not addressed in the CBC, the commenter's suggestion is not substantially related to DSA-AC's original proposal.
