From: Hollynn D'Lil [mailto:hdlil@comcast.net]
Sent: Wednesday, May 14, 2014 8:23 PM
To: Corelis, Dennis@DGS
Cc: richardskaff@designingaccessiblecommunities.org; 'Gilda Puente-Peters'; McGowan, Jim@DGS
Subject: Please consider
Importance: High

I'm writing to ask you to consider our comments. As you know, there is virtually no representation of the end users in access code development. There is formidable representation by industries and individuals who are vested in opposing access. This leaves the disability community in the vulnerable position of relying upon volunteers like myself - one person who is not in the code development loop and who made a terrible mistake of not understanding the BSC notice.

I'm asking this of you because you have treated the disability community fairly in the past, and we rely greatly upon your judgment.

Thank you for your time and consideration. Comments follow.
HolLynn

11B-226 Dining surfaces and work surfaces

11B-226.3 Dining surfaces exceeding 34 inches in height. *Where food or drink is served for consumption at a counter dining surface exceeding 34 inches (864 mm) in height is provided for the consumption of food or drink, a portion of the main counter dining surface 60 inches (1525 mm) minimum in length shall be provided in compliance with Section ~~11B-902.3~~ 11B-902.*

Comment 1: Please direct DSA to create one code standard for knee clearance.

Discussion on Comment 1: During the discussions about dining and work surfaces as they related to knee clearances, a number of us raised the concern that present knee clearances in Title 24 11B only called for 27 inches of knee clearance. On numerous occasions, we have raised our concerns about knee clearance requirements in Title 24 because of the change of design changes to wheelchairs. It is now very obvious that most powered wheelchairs require greater clearance under surfaces due to their design which now have motors that provide tilt-in-space, seat height adjustment and other ergonomic adjustments. DSA should also work to provide consistent knee space clearance through 11B because some fixtures require 27 inches. Consistency would lead to better compliance.

Comment 2: This proposed code change conflicts with BSC 9-poing criteria 1, 2, 3, and 4. Please send this proposed code change back for further development and clarification.

Discussion on Comment 2: The proposed language states "a portion of the main counter" shall be made accessible. However, the intent of making this portion of the accessible to facilitate equal access to what transpires at a counter - interaction with the bartender and other customers, view of the kitchen preparations, etc. - is not provided without further language to insure that equivalent sight lines are provided as well as the ability to hand drinks and food back and forth. For example counter sight lines and interaction can be blocked by the placement of refrigerated cases, walls and other impediments.

More importantly, the proposed language will be a violation of Federal and state laws as decided by the United States Court of Appeals For the Ninth Circuit in the Maurizio Antoninetti, ü Nos. 08-55867, *Plaintiff-Appellant, Cross-* 08-55946, *Appellee,* 09-55327, v. ý 09-55425 CHIPOTLE MEXICAN GRILL, INC., D.C. No. Defendant-Appellee, Cross-3:05-cv-01660-J*Appellant* decision. The Chipotle decision seems to speak to having an equivalent line of site to see your drink being prepared, interact with the bartender and other customers, as well as see food preparation. Though the decision speaks to a wall separating persons in wheelchairs from being able to choose ingredients and watch preparation, the same experience can be denied at a fixed accessible counter. The state should be proactive in making sure that the lack of providing equivalent facilitation at a counter in the proposed code change does not lead to lawsuits.

The 9th Circuit held, "[8] As noted, the presence of the wall in the two restaurants significantly reduced Antoninetti's ability to enjoy the "Chipotle experience." From his wheelchair, he could not see and evaluate the various available foods and decide which or how much of each he wanted. He also could not watch the food service employee combine those ingredients to form his order. The substitutes that Chipotle provided—showing him samples of the individual foods in serving spoons, held in tongs or in plastic cups, or assembling the food at the "transaction station" or at a table in the seating area—do not constitute "equivalent facilitation" because they do not involve "use of other designs and technologies" or "provide [him with] substantially equivalent or greater access to and usability of the facility." They merely provide a substitute experience that lacks the customer's personal participation in the selection and preparation of the food that the full "Chipotle experience" furnishes.

"[11] In any event, in its present posture, this is a quite different case from the one the district court decided. We have held that the wall in the two restaurants violates the Disabilities Act, and that neither Chipotle's new or old policies ameliorated the violation.

[16] The violations of the Disabilities Act we have found are that, because of the wall, Antoninetti was unable to see the food arranged on the food counter or the preparation of his order, as non-wheelchair-bound customers could do, and thus was unable to enjoy the "Chipotle experience."

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11B-226. Dining Surfaces and Work Surfaces.
11B-226.4 Baby changing tables. *Baby changing tables shall comply with Sections 11B-309 and 11B-902. Baby changing tables when deployed shall not obstruct the required width of an accessible route except as allowed by Section 11B-307.2. Baby changing tables shall not be located in toilet compartments complying with Section 11B-604.8 within a multiple accommodation toilet facility.*
and
11B-603.5 Accessories. ***11B*-603 Toilet and bathing rooms**
11B-603.5 Accessories. *Where towel or sanitary napkin dispensers, waste receptacles, or other accessories are provided in toilet facilities, at least one of each type shall be located on an accessible route. All operable parts, including coin slots, shall be 40 inches (1016 mm) maximum above the finish floor.*
Exception: *Baby changing tables are not required to comply with Section 11B-603.5.*

Comment: This proposed code change conflicts with Items I, 2, 3, 4 and 7 of the 9-point CBSC criteria.

Please do not approve this code change and refer it back to DSA for further