



**A Report of
The 2023 – 2024 Contra Costa County
Civil Grand Jury**

Report 2403

June 6, 2024

**Construction-Related Accessibility Standards and the
Department of Conservation and Development**



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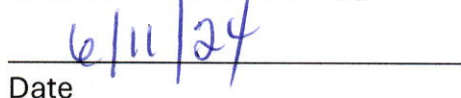
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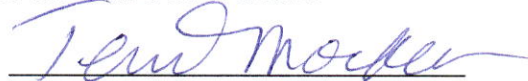
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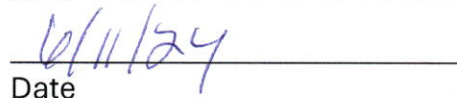
JOANNE SARMENTO
GRAND JURY FOREPERSON


Date

APPROVED FOR FILING



Hon. TERRI MOCKLER
JUDGE OF THE SUPERIOR COURT


Date

SUMMARY

Businesses are required to make their facilities accessible to people with disabilities. The California Construction-Related Accessibility Standards Compliance Act, along with other statutes, helps California businesses comply with state and federal accessibility standards. One requirement of this Act is that “a public agency shall employ or retain at least one building inspector who is a certified access specialist.” A certified access specialist (CASp) is a person who has met criteria specified by the California Division of the State Architect (DSA) for knowledge of “standard acts governing access to buildings for persons with disabilities.” The CASp certification process verifies that a CASp has a detailed knowledge of accessibility standards.

In Contra Costa County, the building department for the unincorporated areas of the county and cities that do not have their own building departments, is part of the Department of Conservation and Development (DCD). Except for a three-month period in 2021, DCD did not employ or retain a CASp during the ten-year period preceding this Grand Jury investigation.

The building department policy is to follow the California Building Code which includes accessibility requirements. DCD trains building department staff in accessibility. The CASps that DCD has retained since 1/1/2024 are available for consultation by building department staff.

This report recommends that the Board of Supervisors (BOS) investigate whether DCD is using best practices to enforce accessibility standards in commercial buildings in the areas of the county where it has jurisdiction.

METHODOLOGY

In the course of its investigation, the Grand Jury:

- Interviewed personnel in county agencies, building contractors, certified access experts and a building official in another jurisdiction.
- Reviewed Federal, California, and County law and standards.
- Reviewed policies and procedures and other information from DCD and County Auditor/Controller.

BACKGROUND

Unruh Act and the Americans with Disabilities Act

Facilities that are designed for able-bodied people may not be accessible to people with disabilities. In California, the 1959 Unruh Act prohibits unlawful discrimination based on many factors, including disability. In 1992, the federal Americans with Disabilities Act (ADA) established rules for eliminating barriers for people with disabilities. Both acts were modified later, and interpretations of their requirements have been updated. Construction-related accessibility

requirements are included in Chapter 11B of the California Building Code, Title 24 of the California Code of Regulations.

The Unruh Act says it is illegal to discriminate against disabled people. The ADA addresses what disabled people should be able to access, and the California Building Code identifies the construction-related features required to allow that access.

Public accommodations are businesses, including private entities, that are open to the public or provide goods and services to the public. A place of public accommodation that does not comply with these standards is out of compliance with the ADA and is potentially liable for civil penalties. The purpose of the Unruh Act and the ADA is to make businesses accessible to people with disabilities. Accessibility standards include such details as the number and design of handicapped parking spaces in a parking lot; rules for paths of travel including allowable slopes; rules for opening doors or actuating equipment; dimensions of handicapped toilets and including heights of toilets and paper towel holders. Businesses that are out of compliance with accessibility standards are vulnerable to lawsuits.

The Division of the State Architect

The primary function of the Division of the State Architect (DSA) is to provide design and construction oversight for K-12 schools, community colleges, and various other state-owned facilities. It also administers the CASp program which was designed to meet the public's need for experienced, trained, and tested individuals who can perform inspections for construction-related accessibility to places of public accommodation. This program is implemented through different parts of state law, some of which are summarized below.

- DSA implemented a program for certifying CASps. (Government Code Section 6959.5). Pass rates in the CASp exam are not high. 39% of the candidates taking the February 2014 exam became CASps. There are approximately 900 CASps in California.
- If businesses that have been “inspected by a CASp” are sued for non-compliance they are “qualified defendants” and have legal benefits. (Civil Code Section 55.52 (a) (8).
- Public agencies are required to employ or retain at least one building inspector who is a CASp as of 2010 (Civil Code Section 55.53(d)(1)), and a sufficient number of CASps to conduct permitting and plan check services as of 2014. (Civil Code Section 55.53(d)(2)), see Appendix 1.
- The additional cost of employing or retaining CASps can be recouped from permit fees. (Civil Code Section 55.53(d)(3)), see Appendix 1.
- A percentage of a fee added to business license applications and some building permit applications is deposited in an accessibility compliance fund which can be used for training CASps. (Government Code Section 4467), see Appendix 2.
- An informational notice is required to be given to applicants for new and renewed business licenses about disability access laws, which encourages consultation with a CASp. (Government Code Section 4469), see Appendix 2.

- An informational notice is required to be given to applicants for commercial building permits about disability access laws, which encourages consultation with a CASp before and after construction. Government Code Section 4469.5), see Appendix 2.

DSA also contributed to the California Building Code Section 11B, Accessibility to Public Buildings, Public Accommodations, Commercial Buildings and Public Housing. This Building Code contains the standards California building departments follow to make places of public accommodations accessible to disabled people.

DCD has not employed or retained a CASp, except for one three-month period, between June 2013 and January 2024. On January 1, 2024, DCD retained one CASp to train five DCD staff to become CASps.

DISCUSSION

DCD Compliance with Accessibility Regulations

DCD compliance is summarized in Table 1.

- DCD has not consistently employed or retained a CASp building inspector, or a sufficient number to conduct permitting and plan check services since 2014.
- The Accessibility Compliance Fund, which has been financed with fees collected from business owners, has retained the majority of the money collected, while less than 28% has been used to improve accessibility compliance.
- The informational notice about disability access laws that is to be provided to applicants for building permits for commercial buildings was not being provided as of 12/31/2023.

The Grand Jury investigation determined that:

- Review by a CASp-certified individual is not required for any project permitted by the County.
- DCD staff have been trained in accessibility standards of the Building Code but have not yet been certified.
- The Grand Jury has not been able to independently confirm that this training is adequate as no member of staff has been certified as a CASp by DSA.
- The law requires that DCD employs or retains at least one building inspector who is a CASp, and a sufficient number of CASps to conduct permitting and plan check services.
- Until 2014 DCD has not had CASps consistently available to do inspections or conduct permitting and plan check services so did not have a procedure for involving CASps in building inspections or plan check services.
- The number of CASps that is “sufficient” has not been determined.

Table 1: DCD Compliance with Accessibility Regulations

| Requirement | Code Section | Start Date (End Date) | Compliance |
|--|-------------------------|------------------------------|--|
| A local agency shall employ or retain at least one building inspector who is a CASp. | CIV 55.53(d) (1) | 1/1/2010 (None) | CASps were employed from 7/23/2010 to 6/8/2013 and 6/21/2021 to 9/21/2021. One CASp retained from 1/1/2024 to present. |
| A local agency shall employ or retain a sufficient number of CASps to conduct permitting and plan check services. | CIV 55.53 (d)(2) | 1/1/2014 (None) | No CASps have been employed or retained to conduct permitting and plan check services since 6/8/2013. The CASp employed in 2021 was a building inspector. |
| A local agency may additionally charge or increase... fees to the extent necessary to offset the costs of complying with this subdivision. | CIV 55.53 (d)(3) | 1/1/2010 (None) | Existing DCD Access Compliance Fees are listed in Table 3. |
| \$1.00 Fee added to new and renewed business licenses. | GOV 4467 (a)(1) | 1/1/2013 (1/1/2018) | Unknown |
| \$4.00 Fee added to new and renewed business licenses. | GOV 4467 (a)(2) | 1/1/2018 (None) | See Table 2 |
| 85% of additional fee to be added to "Accessibility Compliance Fund." See Table 2. | GOV 4467 (b)(1) | 1/1/2013 (None) | The fund is to be used for training and certifying CASps, to facilitate compliance, or financial assistance to small businesses. DCD had used less than 28% of the available funds as of 12/31/2022. |
| An informational notice to be provided to applicants for new and renewed business licenses and some building permits about disability access laws. | GOV 4469, GOV 4469.5 | 1/1/2013 (None) | DCD has not been providing the required notices to building permit applicants. The Auditor-Controller-Tax Collector Department provides notices to business license applicants. |

- The Grand Jury recognizes the DCD decision to employ or retain at least one building inspector who is a CASp as of 1/1/2024, and notes that DCD is required by law to retain one building inspector who is a CASp until an employee is certified as a CASp.
- The Grand Jury cannot independently verify that DCD staff, working without a CASp, is capable of reviewing building plans for accessibility requirements, or how many CASps would be a sufficient number to conduct permitting and plan check services. The Grand Jury recommends that independent experts be retained to address these questions.

• **Table 2 – Accessibility Compliance Funding Reporting by the Auditor/Controller**

| Year | Total Income | Sent to DSA | Administrative Costs | Training Expenditures | Retained |
|--------------|------------------|-----------------|----------------------|-----------------------|-----------------|
| 2018 | \$21,652 | \$2,165 | \$974 | \$0 | \$18,512 |
| 2019 | \$21,652 | \$2,165 | \$974 | \$10,149 | \$8,363 |
| 2020 | \$20,460 | \$2,046 | \$921 | \$2,257 | \$15,237 |
| 2021 | \$21,184 | \$2,118 | \$953 | \$4,635 | \$13,477 |
| 2022 | \$19,768 | \$1,977 | \$890 | \$7,585 | \$9,317 |
| Total | \$104,716 | \$10,472 | \$4,712 | \$24,626 | \$64,906 |

Informational Notices

The Grand Jury has learned that DCD is now providing the informational notices about accessibility laws that are required by Government Code Section 4469.5.

Funding Considerations

The recommendations in this report are for functional reviews of the DCD organization with little, if any, cost. The accessibility compliance fund or building permit fees are both possible sources of funding if required.

The additional cost of employing or retaining CASps can be recouped from permit fees. (Civil Code Section 55.53(d)(3)), see Appendix 1. The revenue generated from permit fee increases shall be used solely to offset the costs incurred to comply with this sub-division. (Civil Code Section 55.53). A review of the effective use of CASps in the building department is a cost of implementing this code section.

Alternatively, the Accessibility Compliance Fund may be used to facilitate compliance with construction-related accessibility requirements. A review of the effective use CASps in the building department meets this requirement.

FINDINGS

- F1. Civil Code Section 55.53 (d)(1) requires public agencies to employ or retain at least one building inspector who is a CASp.
- F2. Contra Costa County is a public agency covered by this Civil Code Section.
- F3. DCD did not comply with Civil Code Section 55.53 (d)(1) between 6/8/2013 and 6/21/2021 or between 9/21/2021 and 12/31/2023.
- F4. Civil Code Section 55.53 (d)(2) requires public agencies to employ or retain a sufficient number of CASps to conduct permitting and plan check services, effective 1/1/2014.
- F5. CASps currently retained by DCD are available for consultation on accessibility requirements.
- F6. DCD does not have a procedure for any CASps to conduct permitting and plan check services in the building permit approval process.
- F7. Government Code Section 4469.5 requires public agencies to provide an informational notice about accessibility laws to applicants for building permits for additions, alterations, and structural repairs to commercial property, or building permits for new construction of commercial property. This notice encourages business permit applicants to consult CASps.
- F8. DCD was not providing the informational notice required by Government Code Section 4469.5 as of 12/31/2023.
- F9. The law requires that moneys in the Accessibility Compliance Fund shall be used for increased certified access specialist (CASp) training and certification within that local jurisdiction and to facilitate compliance with construction-related accessibility requirements.
- F10. DCD, as of 2022, had used less than 28% of the Accessibility Compliance Fund. The expenditure was used for training.
- F11. The staff being trained for CASp certification are primarily senior staff and may not be involved in most construction-related accessibility reviews.
- F12. The Grand Jury has not been able to independently verify that DCD staff have been adequately trained to review building plans and building inspections for compliance with the accessibility requirements in the Building Code as none have been certified by DSA.
- F13. Building permit fees and the Accessibility Compliance Fund are both allowable sources of funding for review of the effective use of CASps in the building department.

RECOMMENDATIONS

R1. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review of how DCD is ensuring that the building permit process enforces federal and state accessibility requirements.

R2. By December 31, 2024, the Board of Supervisors should consider commissioning an independent CASp review to determine how many CASps is a sufficient number to conduct permitting and plan check services at DCD.

R3. By March 31, 2025, the Board of Supervisors should consider directing DCD to employ or retain the sufficient number of CASps to conduct permitting and plan check services.

R4. By September 30, 2024, the Board of Supervisors should consider directing DCD to report to the County Administrator periodically to confirm the number of CASps employed or retained.

R5. By December 31, 2024, the Board of Supervisors should consider directing DCD to have a procedure in the building permit approval process that identifies those situations where a CASp review is required.

R6. By September 30, 2024. The Board of Supervisors should direct DCD to develop the informational notice required by California Code 4469.5 for current and new commercial building permit applications.

R7. By September 30, 2024. The Board of Supervisors should direct DCD to provide the informational notice required by California Code 4469.5 to current and new commercial building permit applications.

REQUEST FOR RESPONSES

Pursuant to California Penal Code 933(b) et seq/ and California Penal Code 933.05, the 2023-2024 Contra Costa County Civil Grand Jury requests responses from the following governing bodies:

Required Responses

| Responding Agency | Findings | Recommendations |
|--------------------------|-----------------|------------------------|
| Board of Supervisors | F1-F13 | R1-R7 |

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail to ctadmin@contracosta.courts.ca.gov and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

Appendix 1

Construction-Related Accessibility Standards Compliance Act

Civil Code Section 55.53 (d)

(d) (1) Commencing July 1, 2010, a local agency shall employ or retain at least one building inspector who is a certified access specialist. The certified access specialist shall provide consultation to the local agency, permit applicants, and members of the public on compliance with state construction-related accessibility standards with respect to inspections of a place of public accommodation that relate to permitting, plan checks, or new construction, including, but not limited to, inspections relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one half of the certified access specialists shall be building inspectors who are certified access specialists.

(2) Commencing January 1, 2014, a local agency shall employ or retain a sufficient number of building inspectors who are certified access specialists to conduct permitting and plan check services to review for compliance with state construction-related accessibility standards by a place of public accommodation with respect to new construction, including, but not limited to, projects relating to tenant improvements that may impact access. If a local agency employs or retains two or more certified access specialists to comply with this subdivision, at least one-half of the certified access specialists shall be building inspectors who are certified access specialists.

(3) If a permit applicant or member of the public requests consultation from a certified access specialist, the local agency may charge an amount limited to a reasonable hourly rate, an estimate of which shall be provided upon request in advance of the consultation. A local government may additionally charge or increase permitting, plan check, or inspection fees to the extent necessary to offset the costs of complying with this subdivision. Any revenues generated from an hourly or other charge or fee increase under this subdivision shall be used solely to offset the costs incurred to comply with this subdivision. A CASp inspection pursuant to subdivision (a) by a building inspector who is a certified access specialist shall be treated equally for legal and evidentiary purposes as an inspection conducted by a private CASp. Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time.

Appendix 2

Extracts from Government Code Sections 4465-4470

CHAPTER 7.5. Disability Access and Education

Government Code Section 4467

(a) (1) On and after January 1, 2013, through December 31, 2017, inclusive, any applicant for a local business license or equivalent instrument or permit, and from any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of one dollar (\$1) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.

(2) On and after January 1, 2018, the following shall apply:

(A) Any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, shall pay an additional fee of four dollars (\$4) for that license, instrument, or permit, which shall be collected by the city, county, or city and county that issued the license, instrument, or permit.

(B) In any city, county, or city and county that does not issue a business license or an equivalent instrument or permit, an applicant for a building permit shall pay an additional fee of four dollars (\$4) for that building permit, which the city, county, or city and county that issued the building permit shall collect.

(b) (1) The city, county, or city and county shall retain 90 percent of the fees collected under this section, of which up to 5 percent of the retained moneys may be used for related administrative costs of this chapter. The city, county, or city and county shall deposit the remaining moneys in a special fund, established by the city, county, or city and county to be known as the "Accessibility Compliance Fund." The moneys in the fund shall be used for increased certified access specialist (CASp) training and certification within that local jurisdiction and to facilitate compliance with construction-related accessibility requirements, to include providing financial assistance to small businesses for construction of physical accessibility improvements. The highest priority shall be given to the training and retention of certified access specialists to meet the needs of the public in the jurisdiction as provided in Section 55.53 of the Civil Code.

((c) The remaining amount of all fees collected under this section and not retained by the city, county, or city and county pursuant to subdivision (b) shall be transmitted on a quarterly basis to the Division of the State Architect for deposit in the Disability Access and Education Revolving Fund established under Sections 4465 and 4470. The funds shall be transmitted within 15 days of the last day of the fiscal quarter. The Division of the State Architect shall develop and post on its internet website a standard reporting form for use by all local jurisdictions. Up to 75 percent of the collected funds in the Disability Access and Education Revolving Fund shall be used to establish and maintain oversight of the CASp program and to moderate the expense of CASp certification and testing.

Government Code Section 4469

(a) On and after January 1, 2013, each city, county, or city and county shall provide to an applicant for a business license or equivalent instrument or permit and to an applicant for the renewal of a business license or equivalent instrument or permit, the following information:

“Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. You may obtain information about your legal obligations and how to comply with disability access laws at the following agencies:

The Division of the State Architect at www.dgs.ca.gov/dsa/Home.aspx.

The Department of Rehabilitation at www.rehab.cahwnet.gov.

The California Commission on Disability Access at www.cdda.ca.gov.”

(b) In addition to the information described in subdivision (a), on and after January 1, 2024, each city, county, or city and county, in a separate document at least 8¹/₂ inches by 11 inches in size, shall provide to an applicant for a business license or equivalent instrument or permit and to an applicant for the renewal of a business license or equivalent instrument or permit, the following statement, the heading and first paragraph of which shall be written in a 28-point font, and the second of which shall be written in an 18-point font:

“MANDATORY ADA DISCLOSURE

ATTENTION: You may be subject to liability for failure to meet your legal obligation to comply with state and federal disability access laws. The recent issuance or renewal of a business license or equivalent instrument or permit does not mean that your business has been determined to be in compliance with state and federal disability access laws.

Please see the attached materials for more information.

ENSURING EQUAL ACCESS TO YOUR BUSINESS

The State of California wants to ensure that all people have equal access to public and private services. Many people with disabilities do not have equal access to services because many business owners do not take the time to ensure that their businesses are accessible. Some common problems disabled people encounter are:

- (1) The building has architectural barriers that make it difficult or impossible for someone using a wheelchair, walker, or other mobility device to get inside or move around.
- (2) The business uses a website that does not work with screen reading devices and other assistive technology.
- (3) The business does not allow people with disabilities to enter the building with their service animals.
- (4) The staff do not receive ADA training and do not know about the requirements to modify practices or to provide auxiliary aids and services.

As the operator of a business, it is your responsibility to ensure that your business provides equal access to people with disabilities. Refusing to make your business accessible is discrimination under state and federal law. People with disabilities and the government have the right to sue businesses that discriminate.

The best way to protect yourself from a lawsuit is to make your business accessible. Here are some important steps you should take:

(1) Schedule an inspection with a Certified Access Specialist. A Certified Access Specialist (CASp) is a person who the State of California recognizes as having specialized knowledge of accessibility standards. They can inspect your business and tell you what changes you need to make for your business to be accessible to disabled people. Getting a CASp inspection has important benefits, like giving you extra protection in a lawsuit.

To find a CASp in your area, contact the CASp Program at the Division of the State Architect. You can also visit www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx. Additionally, you should contact your local government and ask what resources it has to help businesses comply with disability access laws. The State of California makes money available to local governments to create programs that help business owners comply with disability access laws.

(2) Learn about accessibility laws from reliable sources. There is a lot of misinformation about accessibility laws. Get information about your rights and responsibilities as a business owner from reliable, trustworthy sources. California has several agencies that provide fact sheets, trainings, and other educational materials about accessibility. In fact, one of these agencies, the California Commission on Disability Access, was created by the Legislature for the purpose of helping businesses comply with accessibility laws. You should contact the following agencies and ask for information on how to comply with accessibility laws:

The California Commission on Disability Access: www.cdda.ca.gov.

The Division of the State Architect: www.dgs.ca.gov.

The Department of Rehabilitation: www.dor.ca.gov.

(3) Making your business accessible is good for everyone. It makes your business available to more customers. It also promotes fair and equal access. We thank you for doing your part to help make California a great place for everyone!”

(Amended by Stats. 2023, Ch. 76, Sec. 1. (SB 748) Effective January 1, 2024.)

Government Code Section 4469.5.

(a) In addition to the information required by Section 4469, each city, county, or city and county that issues business licenses, building permits for additions, alterations, and structural repairs to commercial property, or building permits for new construction of commercial property, shall make readily available, and, upon submission to the city, county, or city and county of an application for a business license or building permit, shall provide to the applicant, an informational notice to the applicant containing all of the following:

(1) General information about the compliance requirements pursuant to the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) and the state's disability access laws.

(2) An advisory to the applicant for a building permit that strongly encourages the applicant to do both of the following:

(A) Obtain a consultation by a Certified Access Specialist (CAsp) before alteration or construction in order for the property to be in compliance with disability access laws after the work is completed, so that the applicant can benefit from the advantages of compliance.

(B) Obtain an inspection by a Certified Access Specialist (CAsp) after alteration or construction in order to benefit from the legal protections afforded business and property owners under the Construction-Related Accessibility Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(3) An advisory to the applicant for a business license that strongly encourages the applicant to do both of the following:

(A) Obtain a consultation by a Certified Access Specialist (CAsp) before engaging in business on the premises in order for the property to be in compliance with disability access laws, so that the applicant can benefit from the advantages of compliance.

(B) Obtain an inspection by a Certified Access Specialist (CAsp) after beginning to engage in business on the premises in order to benefit from the legal protections afforded business and property owners under the Construction-Related Accessibility Compliance Act (Part 2.52 (commencing with Section 55.51) of Division 1 of the Civil Code).

(4) Information about how to locate CAsp inspectors, including a link to the Internet Web site of the State Architect where CAsp inspectors are listed, pursuant to Section 4459.8, by geographic area in which they provide or intend to provide services and information about how to obtain CAsp services.

(5) A notice of the federal and state programs that are available to assist small businesses with disability compliance and access expenditures, including, but not limited to, Section 44 of the Internal Revenue Code (disabled access credit for eligible small businesses); Section 190 of the Internal Revenue Code (deduction for expenditures to remove architectural and transportation barriers); the California Capital Access Program Americans with Disabilities Act Financing Program (CalCAP/ADA); and the Disabled Access Credit for Eligible Small Businesses specified in Sections 17053.42 and 23642 of the Revenue and Taxation Code.

(6) A link to the homepage and the resource page of the California Commission on Disability Access.

(b) The informational notice specified in subdivision (a) shall be translated and made available in all of the languages specified in paragraph (3) of subdivision (a) of Section 1632 of the Civil Code and shall be provided to the applicant in whichever format the building permit or business license application is required to be submitted.

(c) For purposes of this section, the term “commercial property” means property that is operating, or is intended to be operated, as a “place of public accommodation” as defined in Section 202 of Title 24 of the California Code of Regulations, or as a facility to which the general public is invited at those premises.

(d) (1) The Division of the State Architect shall develop a model notice that local agencies can use to comply with the requirements of this section.

(2) The Division of the State Architect shall post the model notice on the publicly available portion of the division’s Internet Web site.

(Added by Stats. 2018, Ch. 680, Sec. 2. (AB 3002) Effective January 1, 2019.)