

From: [Jia Min Cheng](#)
To: [Board of Supervisors, \(BOS\)](#); [BOS Legislation, \(BOS\)](#); [BOS-Supervisors](#); [BOS-Legislative Aides](#)
Cc: [Stuart Seaborn Professional](#)
Subject: Public Comments in Opposition to Item #54 on 10/26/2021 Agenda, FILE NO. 211105 Resolution regarding notice and compliance for ADA violations lawsuits
Date: Tuesday, October 26, 2021 1:56:56 PM
Attachments: [2021.10.26 DRC +DRA Public Comments on 10-26-2021 Agenda Item 54.pdf](#)

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To SF BOS:

Please find attached our comments in opposition to Item #54 on the 10/26/2021 Agenda.

Thank you for your consideration,
Jia Min

Jia Min Cheng
Supervising Attorney
Housing Stability Project
(She/Her/Hers)
My name is pronounced: like “Benjamin” minus the “Ben” part

Disability Rights California

Mailing Address: 2111 J St., #406, Sacramento, CA 95816

Telephone: (510) 267-1200

Direct: (510) 267-1254

Fax: (510) 267-1201

www.disabilityrightsca.org

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October 26, 2021

Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

*Submitted via Electronic Mail to Board.of.Supervisors@sfgov.org and
BOS.legislation@sfgov.org*

Re: Public Comments in Opposition to Item #54, FILE NO. 211105
Resolution regarding notice and compliance for ADA violations lawsuits

To the esteemed members of the San Francisco Board of Supervisors:

I write as a long-time San Francisco resident, a current resident of District 3, and a supervising attorney at Disability Rights California (“DRC”) on behalf of DRC and Disability Rights Advocates (“DRA”) in opposition to the proposed resolution regarding notice and compliance for ADA violations lawsuits (Item #54 on the 10/26/2021 BOS Regular Meeting Agenda).

We strongly urge the Board to either reject or decline to act on this extremely complicated matter today. A “notice” requirement would be devastating to disabled individuals’ ability to access the shops, restaurants, and other public places that their fellow San Franciscans can enjoy. **This resolution was put forward only one week ago and without meaningful engagement with the disability community** – in fact our organizations first learned of it this morning despite having engaged in working group discussions convened by the SF District Attorney’s Office since late July 2021 on this very matter. We’re unaware of any other outreach to people with disabilities.

We are troubled by a distorted narrative circulating the Bay Area: that outsiders are exploiting the system by filing frivolous lawsuits against local

mom-and-pop businesses, particularly in San Francisco's Chinatown. That narrative appears to be motivating the Board's consideration of this resolution.

We are troubled because this distorted narrative glosses over the unfortunate fact that our communities, including in San Francisco, are nowhere near as accessible as we might want to think. San Francisco and California have the proud history of leading the nation in the disability rights movement. Our state laws protected the rights of people with disabilities decades before Congress made those protections nationwide. This resolution represents a troubling step backwards. The goal of the ADA, passed more than three decades ago in 1990, is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." Included in that mandate is the requirement that privately-owned places of public accommodation—shopping malls, grocery stores, restaurants, movie theaters, etc.—be accessible to people with disabilities.

"But why resort to litigation?" critics ask. "Why not give small businesses some time to fix the violation first and leave litigation for when it's really necessary?" The answer is that businesses have already had plenty of time to comply with the ADA—it's been around for 30 years. Ignorance of the law does not excuse violation of the law. More importantly, would we ask the same of a person of color alleging racial discrimination—that the business be given time to fix the violation when the discrimination has already occurred? No. Civil rights must not be put on hold until it's convenient to comply.

Even though it has been three decades since the ADA was passed, so many of our public accommodations continue to be inaccessible to people with disabilities. As a San Francisco resident, I walk around and I see some of it; however, as a person that does not have physical disabilities, I am aware that there are likely so many more barriers that escape my notice. Enforcement of the ADA is challenging when there are so still many problems to address three decades later, and so few people doing the work. That is why it is troubling to hear so many people—including local government officials—argue that ADA litigation has gone too far. We have heard officials argue that the high volume of litigation we're seeing must be frivolous based on its sheer numbers.

Voluminous is not the same as *frivolous*. A frivolous lawsuit is one that is baseless and lacks merit. Our legal system already has procedures in place for dealing with frivolous cases, dismissing them before trial and often requiring the frivolous litigants to repay the defendants' attorney fees. Unethical lawyers can be, and are routinely, disbarred. But that is not how most ADA lawsuits are resolved. Most ADA laws are not dismissed as frivolous because they are based on legitimate violations of the ADA.

"But the ADA demands too much. Mom-and-pop stores will go out of business trying to comply!" This is simply not true. The ADA does not require small businesses to spend their last penny on accessibility. Instead, it requires businesses to remove barriers to access when it is "readily achievable." In other words, businesses must remove a barrier to access when it can be done easily without much difficulty or expense.

"But the ADA is so complicated! How is a small business supposed to know what the barriers are and if they need to remove them?" While it is true that the ADA is comprehensive, we are fortunate that there are many resources available to help small businesses in San Francisco comply. We are aware of the excellent work done by the SF Office of Small Business. The Department of Justice and regional ADA centers also provide free technical assistance to businesses on ADA compliance. We even have a state agency—the California Commission on Disability Access—whose goal is to help businesses comply with accessibility laws, reducing the need for litigation. Financial assistance is available to qualifying businesses and federal tax credits available to all businesses.

The pandemic has been a frightening time for everyone. It has also been a time to reflect on how our communities operate and reassess our values. We are troubled that the proposed resolution is being put forth with such inexplicable urgency and without meaningful input from the disability community—the very people whom the ADA sought to protect and who will be most detrimentally impacted by any further increase of barriers to access which this proposed resolution will inadvertently but undoubtedly create. We are further troubled that the proposed resolution has been put forth without input or engagement with Regina Dick-Endrizzi, Executive Director of the Office of Small Business, and Nicole Bohn, Director of the Mayor's Office on Disability. The issue of notice and opportunity to cure for ADA lawsuits has a long, fraught history. When the Federal Government refused to issue regulations to enforce federal laws ensuring disability

access, the disability community occupied the San Francisco department of Health Education and Welfare back in 1974. One of its slogans was “Nothing about us without us.” That occupation worked, the regulations were issued, and that activism continues to this day, Yet this resolution has been introduced without input from the community it directly affects. We urge the SF BOS to reject the proposed resolution, take a step back, and solicit input from the disability community in San Francisco and other stakeholders before moving forward.

Thank you for considering our comments. DRC and our partner organizations are available to provide further clarifying information and proposed solutions which we believe will increase access while simultaneously assisting small businesses and reducing the need for litigation. I can be reached via email at jiamin.cheng@disabilityrightsca.org.

Best regards,

/s/ Jia Min Cheng

/s/ Stuart Seaborn
sseaborn@dralegal.org
Disability Rights Advocates