

CITY AND COUNTY OF SAN FRANCISCO



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June 21, 2010

Hon. James J. McBride
Presiding Judge
San Francisco Superior Court
400 McAllister Street, Room 008
San Francisco, CA 94102

Re: City Attorney Office's response to the April 27, 2010 Civil Grand Jury Report entitled, "Americans with Disabilities Act: Is San Francisco in Compliance?"

Dear Judge McBride:

In accordance with Penal Code Sections 933 and 933.05, the City Attorney's Office submits the following response to the Civil Grand Jury Report entitled, "Americans with Disabilities Act: Is San Francisco in Compliance?" issued on April 27, 2010. The Grand Jury requested that this office respond to the report.

For each Civil Grand Jury finding for which you ask a response from the City Attorney's Office, you asked that we either:

1. agree with the finding; or
2. disagree with it, wholly or partially, and explain why.

For each Civil Grand Jury recommendation for which you ask a response from the City Attorney's Office, you asked that we report either:

1. that the recommendation has been implemented, with a summary explanation of how it was implemented;
2. the recommendation has not been implemented, but will be implemented in the future, with a time frame for the implementation;
3. the recommendation requires further analysis, with an explanation of the scope of that analysis and a time frame for the officer or agency head to be prepared to discuss it (less than six months from the release of the report); or
4. that the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (California Penal Code sections 933, 933.05)

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Of the six findings and six corresponding recommendations in the Civil Grand Jury Report, you have asked for the City Attorney's Office to respond to Finding and Recommendation #1 as listed below.

Finding #1.

San Francisco is vulnerable to litigation for non compliance with Title II mandates of the ADA [Americans with Disabilities Act].

City Attorney's Office Response To Finding #1.

Partially disagree. San Francisco, like many other government entities, is subject to the filing of lawsuits alleging non-compliance with Title II. But that does not mean the City is liable for non-compliance. San Francisco is currently defending a class action lawsuit in Federal District court, entitled *Kirola v. City and County of San Francisco (C07-3685)* ("*Kirola*") concerning the City's Title II compliance. The City is vigorously defending the *Kirola* lawsuit. The City has invested resources to enhance disabled access and we expect the City will continue to invest the resources it has at its disposal to comply with Title II. San Francisco is at the forefront of addressing disability rights and disability access. The City takes proactive steps to correct existing access barriers, and the City works with the community to address any and all complaints it receives. The City already has in place a detailed plan for removing physical access barriers from facilities and from the public right of way.

Recommendation #1.

The City Attorney's Office should assess the liability and risk to the City for the incomplete level of Title II compliance, and report its findings to the Mayor and [Board of Supervisors] by October 31, 2010.


City Attorney's Office Response to Recommendation #1.

Recommendation #1 requires further analysis. The City Attorney's Office disagrees with the suggestion that San Francisco's Title II compliance is "incomplete." The City Attorney's Office will assess the City's liability and risk under Title II and report to the Mayor and Board of Supervisors. The City Attorney's Office will submit a confidential report to the Mayor and Board of Supervisors advising them as to the City's exposure to potential litigation and liability over disability access issues. The City Attorney's Office will submit its report by October 31, 2010, or 60 days following entry of final judgment and exhaustion of any appeals in the *Kirola* litigation, whichever is later. The *Kirola* case is currently set for trial on September 1, 2010. With the results of that litigation in hand, the City Attorney's Office will be better positioned to prepare a meaningful report to the Mayor and Board of Supervisors.

We hope this information is helpful.

Very truly yours,

DENNIS J. HERRERA
City Attorney


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cc: Angela Calvillo, Clerk of the Board of Supervisors
Jim Emery, Deputy City Attorney
Jesse Smith, Chief Assistant City Attorney
Therese Stewart, Chief Deputy City Attorney