

It's Time for Your ADA Audit

By Michael J. Ash, Esq., CRE

THE LATEST RULES FOR ACCESS AND ACCOMMODATIONS in public and private facilities have been in effect since 2010, when the U.S. Department of Justice issued updated regulations under the Americans with Disabilities Act (ADA).

Requirements about access and accommodation have evolved since the 2010 regulations went into effect, as courts have interpreted the ADA regulations in response to litigation. While ADA regulations have very specific rules for public and private parking, lawsuits have created additional requirements for parking operators. Private and public parking operators should review their compliance with the ADA regulations and relevant judicial opinions in their jurisdictions to prevent expensive (and unanticipated) lawsuits.

- Accessible parking spaces should be maintained with a heightened standard of care to remove snow, debris, or other impediments to access.

Enforcement of the ADA regulations is often left to private parties and nonprofit advocacy groups through the filing of a lawsuit.

Drive-by Lawsuits

Complaints for non-compliant ADA facilities have increased dramatically since 2015. Under Title III of the ADA, a plaintiff is not entitled to money damages but can seek reimbursement of attorneys' fees and costs. The provision for attorneys' fees has created a niche practice area for attorneys filing lawsuits on behalf of plaintiffs with disabilities.

Entities with perceived parking deficiencies are even more susceptible to lawsuits in violation of the ADA for "construction-related access claims." These lawsuits are commonly referred to as drive-by lawsuits because a potential plaintiff does not need to get out of his or her vehicle or patronize the establishment to spot a potential violation. It is not uncommon for a parking operator who is targeted with this type of suit to remediate the perceived violation and pay a nuisance settlement rather than incur the costs to litigate the matter.

ADA compliance through litigation has changed the requirements for accessible parking above and beyond the regulations.

On-street Parking

A recent California decision resulted in the extension of ADA accessibility guidelines to on-street parking where no requirement existed in the regulations themselves. In *Fortyone v. City of Lomita*, 766 F.3d 1098 (9th Cir. 2014), the City of Lomita, Calif.,

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The 2010 Regulations

The 2010 ADA amendments included new requirements for the quantity of accessible parking spaces and van-accessible parking spaces:

- Medical facilities require more accessible parking than other types of uses.
- Accessible parking spaces must connect to the building entrance by the shortest possible route and/or must be dispersed throughout a parking facility that serves multiple buildings.
- Accessible parking spaces must comply with strict design criteria to accommodate width, access aisles, and loading areas.
- They must be clearly marked with signage and striping to identify the availability of the accessible space and discourage others from parking in them.



was sued by a private citizen for failure to provide on-street accessible diagonal stall parking. The city attempted to dismiss the suit on the basis that the ADA regulations did not require accessible on-street parking spaces. The lower court denied the city's motion, finding "all public services must be readily accessible" to individuals with disabilities, "whether or not a federal agency has created specific guidelines for a particular service." The court relied on the intent of the ADA regulations that make it unlawful to deny public service to individuals with disabilities.

This decision was upheld on appeal. The Ninth Circuit panel who considered the case noted that the absence of architectural guidelines does not preclude the city from making its on-street parking facilities accessible to people with disabilities. The Ninth Circuit made the specific finding that on-street parking is a "program, service, or activity" for purposes of Title II similar to the treatment of sidewalks that public entities have to ensure the accessibility

of, even though the Title II regulations do not specifically address sidewalks.

The resulting effect from the decision was for cities to reevaluate and address the accessibility of on-street parking, as well as their other programs, services, and activities, to ensure compliance with longstanding statutory obligations to avoid discrimination against individuals with disabilities, regardless of whether detailed regulations or specific guidelines addressing those programs, services, and activities exist.

Parking operators should consult with their attorneys and consultants to ensure compliance with ADA guidelines and for other potential liabilities to avoid the prevalent drive-by lawsuit. [P](#)



MICHAEL J. ASH, Esq., CRE, is a partner with Decotiis, Fitzpatrick, & Cole, LLP. He can be reached at mash@decotiislaw.com.