

CLIENT NEWS BRIEF

Public Agencies Providing On-Street Parking Must Include Parking That Is Accessible to Disabled Persons

Under the Americans with Disabilities Act (ADA), public agencies must ensure that all government services, programs, and facilities are reasonably accessible to disabled persons. In a recent decision by the Ninth Circuit Court of Appeals, *Fortyune v. City of Lomita* (9th Cir. Sept. 5, 2014) __ F.3d __ 2014 WL 4377467, the court held that on-street parking is a government facility that must be accessible to individuals with disabilities. The court reached this holding even though there are no ADA implementing regulations that address this type of facility. This means that when a public agency provides on-street parking, it should ensure that there are sufficient accessible on-street parking spaces or that nearby public parking lots have equal or better accessible parking facilities.

In *Fortyune*, the disabled plaintiff brought a claim under the ADA alleging that he experienced great difficulty when going to facilities in the City of Lomita (City) due to a lack of on-street parking for people with disabilities. The City asserted it had no obligation to provide accessible on-street parking due to the absence of ADA implementing regulations specifically addressing on-street parking facilities.

Disagreeing with the City's contention, the court pointed to the mandates of Title II of the ADA (42 U.S.C. § 12131, *et seq.*). Title II requires public agencies to ensure that no disabled persons are excluded from participation in or denied the benefits of its services, programs, or activities. In prior decisions, the Ninth Circuit construed the terms "services," "programs," and "activities" as encompassing virtually any normal function of a public entity.

In an earlier decision, *Barden v. City of Sacramento* (9th Cir. 2002) 292 F.3d 1073, the Ninth Circuit held that because maintaining sidewalks is a normal function of a public entity, Title II requires public entities to maintain accessible public sidewalks, despite the absence of ADA implementing regulations. Applying the same reasoning, the *Fortyune* court determined that because maintaining public on-street parking is also a normal function of a public entity, accessible on-street parking must be provided despite the lack of a current ADA regulation directly addressing this obligation.

While the *Fortyune* decision compels public entities to provide accessible on-street parking despite the lack of ADA implementing regulations, it does not provide guidance on *how* to comply with this mandate. Until regulations are issued, the United States Department of Justice, in its amicus brief filed in the case, suggests that public entities look to analogous standards addressing other types of parking facilities for guidance on how to satisfy its statutory obligation to provide accessible on-street parking.

Public agencies potentially may be able to meet the accessibility requirements when off-street public parking is provided serving a facility if the off-street parking provides equal or greater access in terms of distance from an accessible entrance, user cost, and convenience, and when the total on-street and off-street accessible parking spaces meet the required minimum number

September 2014
Number 64



David J. Wolfe
Partner and Local Government
Practice Group Co-Chair
Fresno Office
dwolfe@lozanosmith.com



Toni A. Gibbs
Associate
Walnut Creek Office
tgibbs@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

September 2014
Number 64

of accessible spaces. However, there are risks that should be addressed with legal counsel.

If you have any questions on the *Fortyune* decision or the ADA in general, please contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).