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ADA Accessibility Guidelines Apply To Public Rights-Of-Way, Parks, and Playgrounds Constructed or Altered After January 26, 1992

In an opinion released June 22, 2017, the Ninth Circuit Court of Appeal held that pedestrian facilities located within the City and County of San Francisco's right-of-way (*e.g.*., sidewalks, curb cuts, crosswalks, etc.) and various parks and recreation facilities (*e.g.*, playgrounds, parks, etc.), failed to comply with Title II of the Americans with Disabilities Act ("ADA") and related regulations. The Ninth Circuit's decision reversed the District Court's judgment ruling in favor of the City on all issues.

By way of background, the ADA generally requires new construction to comply with the Americans with Disabilities Act Accessibility Guidelines (the "ADAAG"). Construction is "new" if a facility was constructed or altered after January 26, 1992. The ADAAG's standards are precise and thorough. The difference between compliance and noncompliance with a particular standard is often a matter of inches, and obedience to the spirit of the ADA does not excuse noncompliance with the ADAAG's exacting technical requirements.

The ADAAG does not, however, contain facility-specific standards for public rights-of-way, parks, and playgrounds. Based on this, the District Court agreed with the City that ADAAG standards simply do not apply to these facilities. The Ninth Circuit reversed this determination, clarifying instead that the ADAAG's *feature* specific standards apply where such features are found within facilities that are not specifically covered under the ADAAG. In other words, even though the ADAAG has no *facility*-specific standards for a public park, the *features* in that park (*e.g.*, ramps, pathways, etc.) must comply with the ADAAG's *feature*-specific standards.

This decision is a significant departure from past case law, which has generally held that the ADAAG's requirements are limited to newly constructed or altered *buildings and facilities* (and the curb ramps, sidewalks, and loading zones associated with such buildings and facilities). The decision may have serious implications for public facilities that were constructed or altered within public rights-of-way, parks or playgrounds after January 26, 1992.

The opinion makes clear, however, that the ADAAG requirements for new construction and alterations do not govern facilities pre-dating January 26, 1992. For such "existing facilities," the public entity's program, service or activity, when viewed "as a whole," must be readily accessible to individuals with disabilities. As the Ninth Circuit reiterated, "perfect accessibility is not the applicable standard" for existing facilities.

Kirola v. City and County of San Francisco, et al., Ninth Circuit Court of Appeal Case No. 14-17521, filed June 22, 2017.

If you have any questions, please contact Alisha Patterson or Doug Dennington.