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Government and Regulatory Law Advisory

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Ninth Circuit Holds that ADA Applies to Public "On-Street" Parking Even in the Absence of Adopted Technical Design Standards

***Fortyune v. City of Lomita* (9th Cir. 9/5/14) 2014 DJDAR 12344**

Title II of the Americans with Disabilities Act ("ADA")[1] requires states and local governments to operate and maintain public "services, programs or activities" in a manner that is "readily accessible" to the disabled. The U.S. Court of Appeals for the Ninth Circuit has held that the "services, programs or activities" falling within this mandate include virtually "anything a public entity does." (*Barden v. City of Sacramento* (9th Cir. 2002) 292 F.3d 1073, 1076.) The level of accessibility required for any particular public "facility" depends in large part on whether the facility predates the January 26, 1992 "effective date" of the ADA. For facilities constructed or altered after January 26, 1992, the new or altered facility must comply with the technical design standards adopted by the United States Department of Justice. For "existing facilities" predating January 26, 1992, the state or local agency must operate its overall service, program or activity in a manner that, when "viewed in its entirety," is "readily accessible" to the disabled.

On September 5, 2014, the Ninth Circuit issued its opinion in *Fortyune v. City of Lomita*, which holds that states and local governments have an obligation under Title II to provide "accessible" on-street parking spaces where on-street parking spaces are provided for the ambulatory public. The Ninth Circuit so held even though the Department of Justice has yet to adopt technical design standards for parking within the public right-of-way. The Ninth Circuit recognized the additional flexibility afforded to local governments where on-street parking predates the effective date of the ADA, but did not explicitly address whether alternate (off-street) public parking facilities in the area could satisfy the "readily accessible" requirement.

The Ninth Circuit's decision in *Fortyune* does not deal with a number of issues that local governments will need to address in light of this new "on-street" accessible parking obligation, such as:

- What obligation, if any, does a local government have to provide accessible on-street parking on roadways where, on the one hand, public parking is not prohibited but, on the other hand, is not expressly designated for parking with meters or striped stalls.

- What obligation, if any, does a local government have to provide accessible on-street parking on blocks in residential neighborhoods?

- What obligation, if any, does a local government have to provide "van accessible" on-street parking that, for safety and other reasons, may necessitate curb-ramps and aisles to adjacent sidewalks to prevent wheelchair occupants from entering into a travel lane?

[1] Title II of the ADA is codified at 42 U.S.C. §§ 12131-12165.

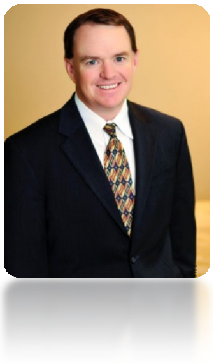
- How are local governments to determine the quantity of accessible on-street parking spaces required for any given roadway segment or block on which on-street parking is allowed for the ambulatory public?

- Where are accessible on-street parking spaces to be located within any given roadway segment or block?

- Must local governments apply the technical design standards for parking stalls in parking lots to on-street parking?

- If so, what flexibility do local governments have to deviate from the slope and dimensional requirements otherwise imposed for accessible parking spaces provided in building sites or parking lots?

The Ninth Circuit's decision in *Fortyune* raises many more questions than it answers—questions that will no doubt need to be resolved through legislation, regulation or, more likely, further litigation. Cities that allow for on-street parking without providing designated "accessible" on-street parking spaces should expect to see an influx of new ADA claims and lawsuits coming their way.



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