

November 4, 2021

To:

City Attorney
City of San Jose, California
cao.main@sanjoseca.gov

Re: LED Billboards and Discrimination

Dear City Attorney of San Jose,

The Soft Lights Foundation has submitted multiple comments informing the City of San Jose that LED billboards are discriminatory. In the [US 101 Airport Electronic Signs Final Initial Study/Addendum Responses to Comments](#), the city continues to ignore the text of the Americans with Disabilities Act.

Response 12.A states, “*The project will comply with applicable ADA requirements.*” The bizarre use of the word “applicable” appears to be meant to avoid being required to comply with “all” ADA requirements. Which portion of the federal Americans with Disabilities Act is not “applicable”?

Here are portions of the Americans with Disabilities Act.¹ Which portions has the City of San Jose decided do are not applicable?

The Congress finds that

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination;

Does the City of San Jose believe that people with disabilities do not have a right to FULLY participate in all aspects of society? Does the City of San Jose believe that is perfectly harmless to shine high energy spatially heterogeneous radiation into the eyes of persons who are LED-reactive, causing them to suffer seizures, migraines, or psychological trauma just because they are sensitive to spatially heterogeneous radiation?

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

Does the City of San Jose believe that a road or freeway is not a “public service”? Does the City of San Jose believe that it is not discrimination to prevent certain persons from using the freeway

¹ <https://www.ada.gov/pubs/adastatute08.htm>

because there are always other roads that the person can take? Does the City of San Jose believe that forcing one person to use a dirt road to avoid LED radiation while everyone else gets to use a high-speed freeway is still “equal treatment” under the law?

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

Does the City of San Jose believe that people with light sensitivity disabilities or people who are LED-reactive can be discriminated against? Does the City of San Jose believe that the radiation from a large LED billboard causes no distraction for people with autism, never causes epileptic seizures, never causes migraines, never interferes with major life functions such as seeing, thinking, or concentrating?

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;

Does the City of San Jose believe that only certain structural designs such as lack of wheelchair access constitute discrimination? Does the City of San Jose believe that “broad coverage” actually means “narrow coverage”? Does the City of San Jose believe that they only have to follow US Access Board guidelines and that, if the US Access Board has no guidelines for a particular situation, such as guidelines for LED billboards, then the City of San Jose is free to discriminate?

Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

We will repeat our notification to the City of San Jose that the radiation from LED billboards interferes with Major life activities for the following real and living persons:

Mark Baker – Mr. Baker has autism. The radiation from LED billboards causes Mr. Baker to focus on the lights of an LED billboard and to lose focus on the surroundings. This is exceedingly dangerous when Mr. Baker is driving on a freeway at 60 miles per hour. Shining light into Mr. Baker’s eyes violates Mr. Baker’s civil right to non-discrimination and violates the goals of the Vision Zero program.

MarieAnn Cherry – Ms. Cherry has epilepsy. The radiation from LED billboards causes Ms. Cherry to suffer an epileptic seizure. While Ms. Cherry does not drive due to her epilepsy condition, it is a violation of her civil rights to cause her to suffer a life-threatening seizure from an LED billboard while being a passenger in a vehicle.

John Moody – John Moody suffers from severe migraines from LED radiation. Mr. Moody will suffer such a migraine when exposed to radiation from an LED billboard. This migraine can last as long as 3 weeks, during which time Mr. Moody is incapacitated and confined to a dark room.

LED billboards emit high levels of dangerous and discriminatory radiation in the visual portion of the electromagnetic spectrum. This radiation is essentially unregulated. As per Ronald Zeiger, of Zeiger Engineers, in his report to the City of San Jose, “Subsequently, the IES *“Lighting Handbook 10th Edition (2011) (the “NA” was dropped) was published, in a completely rewritten format, but it lacks all mention of lighting of outdoor advertising. The recommendations of this publication were based on a report commissioned by the American Outdoor Advertisers Association.”*

In other words, the government does not regulate LED radiation and the Illuminating Engineering Society does not have standards for LED radiation. The only available information on the subject is a “recommendation” from the Outdoor Advertisers Association. This is hardly a reliable or neutral recommendation and does not even rise to the level of standard or regulation.

Figure 1 is a diagram showing categories of radiation.

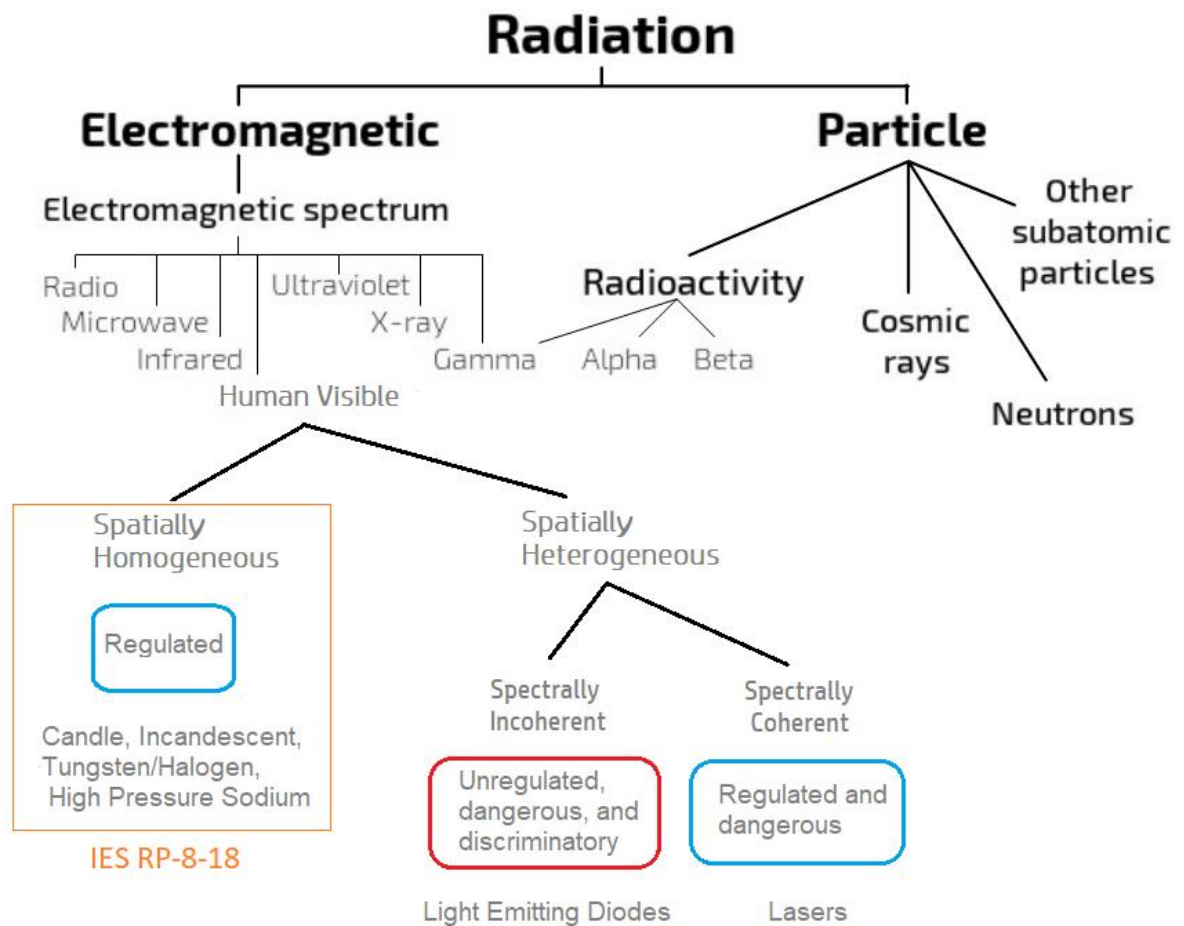


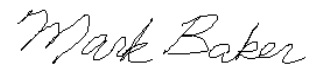
Figure 1 – Radiation

As can be seen in Figure 1, LEDs emit spatially heterogeneous, spectrally incoherent radiation which is unregulated. The Illuminating Engineering Society Roadway and Parking Lot standard IES RP-8-18 regulates lighting, but this standard is only applicable to spatially homogeneous radiation, and as Mr. Zeigler stated, does not cover electronic outdoor advertising.

Given the fact that spatially heterogeneous radiation is unregulated, has been proven to cause epileptic seizures, migraines, loss of concentration, loss of vision, and loss of thinking for persons who are LED-reactive, and violates the goals of Vision Zero, the City of San Jose will be extremely vulnerable to liability lawsuits for discrimination, reckless endangerment and other civil rights violations which could result in hundreds of millions of dollars in damages. The installation of LED radiation devices for the purpose of advertising is clearly not in the best interests of the public.

To protect human health and safety, eliminate discrimination, and reduce liability, the City of San Jose must not authorize the use of radiation devices known as LED billboards.

Sincerely,

A handwritten signature in black ink that reads "Mark Baker". The signature is written in a cursive style with a large initial "M".

Mark Baker
President

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