



9450 SW Gemini Drive  
PMB 44671  
Beaverton, OR 97008  
[www.softlights.org](http://www.softlights.org)

November 4, 2022

**BY EMAIL**

Bonnie Huard, ADA Coordinator  
Medford, OR  
ADA@cityofmedford.org

**Re: Discrimination From Light Emitting Diode Products**

Dear Bonnie Huard,

The Soft Lights Foundation is assisting MarieAnn Cherry with her efforts to be protected from Light Emitting Diode products such as LED streetlights and LED strobe lights. The Soft Lights Foundation is an advocacy group dedicated to helping protect the natural night resource and people who are neurologically impaired by LED products. We are not a law firm and do not offer legal advice and we do not promote or sell any commercial products.

The Americans with Disabilities Act provides for an interactive process for resolving situations where discrimination is occurring. In this case, Ms. Cherry cannot neurologically tolerate the spatially non-uniform visible radiation from LED lights, including LED streetlights and LED strobe lights which Medford is using. Exposure to LED visible radiation triggers life-threatening epileptic seizures for Ms. Cherry. In addition, I have also personally notified Medford that I have been assaulted by the city's use of LED strobe lights which caused me to suffer a traumatic panic attack. Medford informed me that removing the LED strobe lights would be too expensive, and thus Medford's use of these LED products continues to create a discriminatory barrier for Ms. Cherry and myself.

In 1968, Congress passed the Radiation Control for Health and Safety Act, directing the Food and Drug Administration to regulate electromagnetic radiation from electronic products. As you may know, the FDA has never published regulations to protect the comfort, health, and safety of the public for electromagnetic radiation in the human-visible range for flat surface radiation emitters such as Light Emitting Diodes. To rectify this situation, the Soft Lights Foundation has formally petitioned the FDA to regulate LED products. This petition is currently under review and accepting public comments (<https://www.regulations.gov/document/FDA-2022-P-1151-0001>).

LED products are unvetted, unregulated, and unapproved, which means that Medford has no legal authority to use such devices and since there are no regulations or standards for LED products, there is no liability protection for Medford if someone is injured from their use. Ms. Cherry has already suffered hundreds of seizures due to exposure to the visible radiation from LED devices, and I have been emotionally traumatized multiple times from LED devices operated by the city of Medford.

In your correspondence with me, you have not made any claim that the discrimination is not occurring, or that the panic attacks and seizures have not happened. You have only claimed that removing the discriminatory barriers is too expensive.

Generally, the Courts look for the following criteria in any case regarding discrimination:

- a) A letter from a medical doctor stating that the individual has a qualifying ADA condition.
- b) A request to the city for accommodation.
- c) Proof that the city did or did not make substantial efforts prior to modifying a program or service to ensure that the modification will not discriminate.
- d) Proof that the technology used does or does not comply with regulations and standards.

In this situation, Ms. Cherry and I both have medical notes, the city has not shown that they made a substantial effort to ensure that switching to LED technology would not discriminate, and there are no comfort, health, or safety regulations for LED technology that would protect the city from liability.

The government publishes information regarding how the ADA process works. For example, on [ada.gov](http://ada.gov), they write, *“Equal treatment is a fundamental purpose of the ADA”* and *“Public entities have an ongoing obligation to ensure that individuals with disabilities are not excluded from programs and services because facilities are unusable or inaccessible to them.”*<sup>1</sup> For Ms. Cherry, myself, and all others who are similarly affected by LED visible radiation, LED devices create unequal treatment and exclude us from civic life. Just as people who use wheelchairs cannot use the sidewalk when the sidewalk is inaccessible due to lack of curb cuts, people who have adverse reactions to LED visible radiation cannot use the sidewalk or the street when subjected to flat surface visible radiation from LED streetlights or LED strobe lights.

In your May 20, 2022, letter to me, you claimed that removing the LED strobe lights from emergency vehicles *“would be a fundamental alteration”* to the effectiveness of Medford emergency vehicles. This statement ignores the fact that the actual *“fundamental alteration”* was when the city unilaterally decided to switch to LED technology without first ensuring that such technology does not discriminate. The city’s switch to LED technology is what created the discrimination, where none existed before. It is not now possible for the city to claim that returning the city’s emergency vehicles to their previous non-discriminatory configuration to eliminate the discrimination would be a fundamental alteration to the previously non-discriminatory lighting systems.

Also in your May 20, 2022, letter, you claimed that my request to eliminate the discriminatory LED strobe lights is *“not a reasonable modification.”* Again, my request is to restore the city’s emergency vehicles to the lighting configuration that the city was using before the city decided to install the discriminatory LED strobe lights. The city is not disputing that these LED strobe lights are discriminatory and cause seizures and psychological trauma for people with disabilities, but is only claiming that it’s too expensive to eliminate them. If this type of logic were valid, then no city would ever have installed curb cuts for wheelchair users because doing so is expensive. In addition, the concept of *“reasonable modification”* is applicable to programs and services that existed prior to the 1990 passage of the ADA. City modifications to existing programs and services or the creation of new

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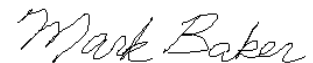
<sup>1</sup> [https://www.ada.gov/regs2010/titleII\\_2010/title\\_ii\\_primer.html](https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html)

programs or services after 1990 requires that the city ensure BEFORE implementing the new or modified program or service that such program or service is not discriminatory. In the case of LED strobe lights, the city failed to perform due diligence, therefore my request to return the emergency vehicle lighting system to its previous non-discriminatory configuration is not unreasonable.

Additionally in your May 20, 2022, letter, you provided ideas for how to protect myself from the dangers of LED strobe lights, including pulling over to the side of the road, consulting an eye doctor for special glasses, and using a scanner to determine where the dangerous emergency vehicles are within the city. These suggestions are not “accommodations” that the city can provide. These suggestions are ideas that the city believes could protect me from the harms of LED visible radiation. Therefore, not only is the city clearly showing that they believe that LED strobe lights are dangerous, but the city is not offering an accommodation that allows me to participate in the city’s programs and services as equally as others.

Therefore, on behalf of Ms. Cherry, myself, and all others who face discrimination due to the use of LED products, we request the initiation of an ADA interactive process to discuss the systemic problems associated with LEDs and we seek to find a mutually acceptable set of accommodations that will allow us to safely and comfortably use the programs and services provided by Medford.

Sincerely,

A handwritten signature in cursive script that reads "Mark Baker".

Mark Baker  
President

Soft Lights Foundation  
[mbaker@softlights.org](mailto:mbaker@softlights.org)

cell: 408-455-9233