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VIA EMAIL

Jillian LeDuc, ADA Coordinator
City of Davis, California
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RE: Obligation to Conduct ADA Self-Evaluation for Light and Audible Signal Communications – 28 CFR § 35.105

Dear ADA Coordinator,

I. Introduction and Legal Basis for This Notice

I am writing to formally notify the City of Davis (the “City”) of its ongoing and non-discretionary legal obligation to perform a comprehensive Americans with Disabilities Act (ADA) Self-Evaluation as required by 28 CFR § 35.105. This notice is issued pursuant to federal law, and it raises issues of systemic non-compliance that, if unaddressed, expose the City to significant legal liability.

Under established ADA case law and Department of Justice (DOJ) guidance, the duty to conduct a self-evaluation is not a one-time historical event. It is a continuous obligation triggered whenever a public entity adopts new technologies, implements new services, or contracts with third-party vendors in ways that alter how the City communicates with the public, provides access to its programs, or deploys equipment that may create barriers for individuals with disabilities.

“A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self- evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.” DOJ Title II Technical Assistance Manual § II-8.2000.

“[T]he phrase ‘programs, services, or activities’ is “a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context” *Barden v. City of Sacramento* (9th Cir. 2002), 292 F.3d 1073, 1076. Thus, if a city modifies its programs, services, or activities, such as by introducing new technology, the city is required to perform a self-evaluation to determine whether this new technology may exclude or limit the participation of individuals with disabilities.

The self-evaluation requirement specifically directs public entities to “proceed to make the necessary modifications” in services, policies, and practices to achieve Title II compliance (*Tyler*

v. City of Manhattan (D. Kan. 1994) 849 F. Supp. 1429, 1440). As established in *Tyler*, a self-evaluation that fails to address the specific barriers created by a public entity's current operational realities is legally inadequate. Consequently, a city that fails to perform a self-evaluation when implementing a new service, program, or technology remains in a state of systemic non-compliance and is subject to actionable claims of discrimination regarding those un-evaluated deployments (*Id.* at 1440).

II. Specific Areas Requiring Immediate Self-Evaluation

The City may be in violation of 28 CFR § 35.105. The self-evaluation obligation is non-discretionary, and an evaluation addressing the use of light or sound for communication may not have been conducted. 28 CFR § 35.160 states that a city “shall take appropriate steps to ensure that communications” with individuals with disabilities “are as effective as communications with others.” The introduction of high-intensity Light Emitting Diode (LED) products and electronic audible signals may have created new potential discriminatory barriers for individuals with neurological disabilities such as epilepsy, autism, PTSD, photophobia, migraines, and others. Therefore, the City must carry out a self-evaluation of its programs, services, and activities that use LED lights or electronic sounds for the purpose of communication.

The following are areas that may need a self-evaluation by the City:

A. Auxiliary Vehicle Warning Lamps

The City might be using auxiliary vehicle lamps to communicate warnings to the public from the City’s fire, police, and utility vehicles. The switch to LED technology has enabled the auxiliary vehicle lamps to be extremely intense, often with digital flashing. For certain individuals with disabilities, the intensity or digital on/off nature of the light can be incapacitating.

The Federal Motor Vehicle Safety Standards, specifically 49 CFR § 571.108 (S6.2.1), impose a “steady-burning” requirement for auxiliary vehicle lamps, mandating that they emit continuous, non-flashing light. While State law often permits discretionary use of flashing lights, this discretionary permission does not supersede the mandatory federal requirement that all auxiliary warning lamps be steady burning.

In addition, 49 U.S.C. § 30122 prohibits a third-party from modifying a vehicle in a way that makes federally required vehicle lamps inoperative. The National Highway Traffic Safety Administration (NHTSA) prohibits third-party vendors from installing non-steady burning auxiliary lamps.

On June 27, 2024 and again on December 13, 2024, the National Highway Traffic Safety Administration (NHTSA), issued formal Letters of Interpretation confirming that all auxiliary warning lamps must be “steady burning.” High-intensity flashing lights have been shown to impair vision and trigger seizures, migraines, and panic attacks. Therefore, any auxiliary vehicle lamp that flashes or strobos is both a federal safety violation and a disability-access barrier under 28 CFR § 35.160. In addition to restrictions on flashing, an excessively intense static auxiliary warning lamp can also impair vision and the effectiveness of federally required lamps, and therefore the City must establish an upper limit on luminance.

The City's self-evaluation must document whether its current auxiliary warning lamp procurement standards and deployment specifications have been assessed for photobiological and neurological risk and must identify what policy changes, such as establishing maximum luminance or prohibiting digital strobing, are required to bring the City's infrastructure programs into compliance with 28 CFR § 35.105(a).

B. Traffic Control Devices

A Rectangular Rapid Flashing Beacon (RRFB) uses high-intensity, digitally flashing LED lights to command drivers to stop at a pedestrian crossing. For certain individuals with disabilities, the intensity or digital on/off nature of the light can be incapacitating. It has been documented that RRFB's can trigger epileptic seizures and panic attacks.

The City's self-evaluation must document whether RRFBs are safe for individuals with epilepsy, PTSD, migraines, autism, and other individuals with neurological disorders and assess whether RRFBs provide communication that is just as effective for those individuals as with others, as required by 28 CFR § 35.160.

Similar communication devices using LED light such as a High-Intensity Activated crosswalk (HAWK) systems, yellow flashing lights at roundabouts and sharp turns on roadways, flashing LEDs on the vertices of stop and yield signs, and all other traffic control devices that use LED lights for signaling and communication with the public must be assessed for compliance with 28 CFR § 35.160.

C. Electronic Vehicle Sirens

The City may have deployed electronic vehicle sirens, such as on firetrucks and police vehicles, which must be assessed for their disproportionate impact on neurodivergent individuals, particularly those with Autism Spectrum Disorder (ASD) and related sensory processing conditions

Modern electronic tones can trigger severe auditory hypersensitivity responses in individuals with ASD, effectively preventing their access to public rights-of-way during siren activations. This is not a subjective preference; it is a documented disability-related functional limitation. The ADA requires that programs and services be accessible to individuals with sensory processing disabilities, and the effective communication mandate of 28 CFR § 35.160 requires that the City ensure its communications and alerts do not exclude disabled residents from participation.

The City's self-evaluation must document the decibel level, frequency, repetition pattern, and other characteristics that provide communication via sound with individuals with disabilities, including those with ASD.

D. Third-Party "Active Deterrence" Systems

An "active deterrence" system uses lights and sounds to deter individuals from places of public accommodations based on the individual's potential to commit a crime. The typical active deterrence system is a mobile unit with blue LED strobe lights, loudspeakers, and video cameras. The use of active deterrence systems may be a violation of the ADA, and in California, a violation of the California Unruh Civil Rights Act.

The City regulates public accommodations such as shopping centers where these active deterrence systems are typically deployed. The City must evaluate its Conditional Use Permits, Planned Unit Development agreements, vendor licensing requirements, nuisance ordinances, outdoor lighting ordinances, and noise ordinances to ensure that active deterrence systems are regulated by the City. In addition, the City itself may contract with an active deterrence vendor, and therefore the city must evaluate whether its policies, practices, and procedures ensure protection for individuals with disabilities.

E. Drones

Drones often use LED lights, both static and strobing. These lights can cause significant distraction, and interfere with the ability to see, think, and concentrate, and interfere with path of travel for certain individuals with disabilities. The lights are used for the purpose of communication and therefore must comply with all ADA communication requirements. Drones might be used by both the City, requiring compliance with Title II of the ADA, and private individuals.

The City's self-evaluation must address: (1) all drone operations conducted directly by the City or by vendors operating under City authorization or license; (2) the LED output specifications, including flash frequency, rise/decay time, and luminance, of all drone lighting systems currently in use or under procurement; (3) the audible signal specifications of all drone alert and deterrence systems; (4) whether current drone operational policies include any accessibility standards or restrictions governing light and sound output in proximity to the public; and (5) what policy, code provision, or procurement standard must be adopted to ensure that drone operations in public spaces comply with the default accessibility requirements of 28 CFR §§ 35.150 and 35.160.

F. Default Accessibility

A foundational principle of ADA Title II is that a public entity's programs, services, and activities must be accessible to individuals with disabilities as a matter of default design — not as a result of individual negotiation or accommodation request. Under 28 CFR § 35.150, the City is required to operate each program, service, and activity so that it is readily accessible to and usable by individuals with disabilities. Under 28 CFR § 35.160, the City must ensure effective communication with individuals with disabilities. Neither provision conditions accessibility on the affected individual first identifying themselves, disclosing their disability, and requesting a modification. The obligation runs to the program itself, not to the individual who must navigate it.

Applied to signaling and communication technology, this principle has direct and non-trivial consequences. A resident with photosensitive epilepsy, chronic migraine disorder, or a sensory processing disorder should not be required to submit an ADA accommodation request in order to use a crosswalk, travel a public right-of-way, or be present in a public space without risk of vision impairment, pain, a migraine episode, a panic attack, or a seizure induced by the City's own infrastructure. A resident with autism spectrum disorder should not be required to request a modification in order to access a public space without being subjected to audible signals calibrated at intensities or frequencies that cause physical pain or acute trauma. These are not accommodation scenarios. They are program accessibility failures.

The DOJ has made clear that public entities may not place the burden of achieving accessibility on the individual with a disability. A system that is accessible only to those who know to ask, and who are able to ask, is not an accessible system. It is a barrier with an opt-out procedure. The ADA does not permit this structure for programs that affect the general public in the public right-of-way.

Accordingly, the City's self-evaluation must establish default accessibility standards for all signaling and communication technology deployed in the public right-of-way. Specifically: (1) the default light intensity and flash characteristics of all traffic signals, warning beacons, and auxiliary vehicle lamps, must not impair vision, cause pain, induce migraine episodes, trigger panic responses, or cause seizures in individuals with photosensitive epilepsy, migraine disorder, or sensory processing disabilities; and (2) the default volume, frequency, pattern, and duration of all audible signals, including pedestrian crossing tones and emergency alerts on city vehicles, must not cause physical pain or acute trauma to individuals with autism spectrum disorder or auditory hypersensitivity conditions. Where current deployments do not meet these standards, the self-evaluation must identify the specific remedial measures, whether equipment replacement, output recalibration, or policy restriction, required to achieve compliance.

III. Mandatory Public Participation and Comment Period

Federal law is unambiguous regarding the public's role in the self-evaluation process. Under 28 CFR § 35.105(b), the City is expressly required to "provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments." This is not a discretionary courtesy; it is a procedural right.

The failure to convene a meaningful public comment period is itself a violation of 28 CFR § 35.105(b), independent of any substantive findings. To ensure transparency and legal compliance, I formally request that the City take the following specific actions:

1. Formally announce, in writing and via public notice, the commencement of a self-evaluation process specifically addressing light and sound signaling and communication deployed in the public right-of-way and on city-owned property.
2. Establish a dedicated public comment period of no fewer than 30 days, with accessible submission mechanisms (including electronic submission), to allow residents and disability-rights organizations to document specific sensory and neurological barriers they have encountered as a result of City-deployed or City-licensed technology.
3. Produce and maintain a written self-evaluation, along with a list of all interested persons and organizations consulted, available for public inspection for a minimum of three (3) years, as mandated by 28 CFR § 35.105(c).
4. Provide written confirmation to the undersigned within twenty-one (21) days of receipt of this letter, including the City's proposed timeline for completion of the self-evaluation and the scheduled dates for the public comment period.

IV. Consequences of Non-Compliance and Legal Exposure

A failure to update the City's self-evaluation in response to the adoption of new technologies, specifically LED signaling infrastructure and electronic sounds, would create multiple and compounding legal risks:

- **Federal ADA Title II Claims:** Individuals aggrieved by the barriers described herein may file complaints with the U.S. Department of Justice, Civil Rights Division, or initiate private litigation under 42 U.S.C. § 12132. A city's lack of a current self-evaluation for light and sound communication would be treated as evidence of systemic, rather than isolated, non-compliance.
- **California Disabled Persons Act (DPA):** In California, Cal. Civ. Code § 54 et seq. provides additional independent state-law remedies for individuals with disabilities denied full and equal access to public facilities, with its own attorney's fees provisions.
- **Federal Funding Jeopardy:** Cities receiving federal financial assistance, including Community Development Block Grant, transportation, or infrastructure grants, are subject to additional compliance requirements. Documented non-compliance with ADA Title II can jeopardize existing and future federal grant awards.

V. Federal Administrative Procedure Act: This Notice as a Record of Agency Inaction

This letter is intended to serve a dual function. It is simultaneously a formal notice to the City of its ADA self-evaluation obligations, and a record-creating document directed at the federal agencies responsible for enforcing Title II of the ADA and the conditions attached to federal grants received by the City. That record has independent legal significance under the federal Administrative Procedure Act, 5 U.S.C. § 706(1).

Under 5 U.S.C. § 706(1), a federal court may compel agency action that has been unreasonably or unlawfully withheld. Critically, this remedy is available to private individuals, not only to the government itself. A private plaintiff with a concrete interest in the outcome, including an individual with a disability affected by the City's non-compliant infrastructure, or an organization representing such individuals, may file an APA claim in federal court directly against the relevant federal agency, seeking a court order compelling that agency to discharge its mandatory enforcement duties with respect to the City.

The United States Department of Justice has a mandatory, non-discretionary duty to coordinate enforcement of Title II of the ADA under 28 CFR § 35.190. Federal grant-making agencies, including the Federal Highway Administration (FHWA) for transportation and signal infrastructure, and the Department of Housing and Urban Development (HUD) for Community Development Block Grant (CDBG) recipients, have their own mandatory compliance review obligations tied to the federal funds they administer. These are not discretionary policy choices that the agencies may decline to exercise at will; they are legally required functions. Where a public entity is in documented, noticed non-compliance with Title II, those agencies are not free to ignore the condition indefinitely, and a private individual may seek judicial relief to compel them to act.

The Supreme Court confirmed in *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004), that a § 706(1) claim requires the plaintiff to identify a discrete, legally required agency action that has been withheld. The self-evaluation mandate under 28 CFR § 35.105 is

precisely such a discrete, non-discretionary duty — it is not a general policy aspiration but a specific regulatory requirement with defined procedural components. A federal agency’s failure to act upon documented evidence that a grantee city is not conducting the required self-evaluation therefore satisfies the *Norton* framework for APA relief.

Critically, an APA claim under § 706(1) against a federal agency for unreasonably withholding enforcement is not subject to the same disability-based standing requirements as a private Title II suit against the City. A plaintiff with a concrete interest in the outcome of federal enforcement, including organizations with affected constituents, has U.S. Constitution Article III standing to compel DOJ or FHWA to discharge their mandatory enforcement duties, independent of whether that plaintiff is themselves a person with a disability.

The City's failure to respond, or failure to perform the requested self-evaluation, may result in litigation under the APA by any private plaintiff with a concrete interest in federal enforcement, and/or a private ADA claim by an aggrieved individual with a disability.

VI. Conclusion and Request for Response

This letter constitutes formal legal notice of the City’s obligations under federal and California law. It is provided in good faith and in the hope that the City will take prompt action rather than await formal administrative or judicial proceedings.

I respectfully request a written response within twenty-one (21) calendar days detailing: (a) the City’s acknowledgment of its self-evaluation obligation; (b) the proposed timeline and scope of the forthcoming evaluation; and (c) the dates and format of the required public comment period.

Please be advised that this notice, along with the City’s response or non-response, may be provided to relevant state and federal agencies, disability-rights organizations, and, if necessary, used in subsequent legal proceedings.

Sincerely,

/s/ Mark Baker

Enclosure: Summary of Legal Authorities Cited

- 28 CFR § 35.105 – ADA Self-Evaluation requirement for public entities
- 28 CFR § 35.107 – Designation of responsible employee and adoption of grievance procedures
- 28 CFR § 35.130(b)(1) – Prohibition on criteria or methods of administration that defeat ADA objectives
- 28 CFR § 35.150 – Requirement that existing facilities be readily accessible and usable by individuals with disabilities.
- 28 CFR § 35.160 – Effective communication requirements for public entities

- 49 CFR § 571.108 (S6.2.1) – FMVSS Lamp, Reflective Device, and Associated Equipment Standards (steady-burning requirement)
- NHTSA Letters of Interpretation (June 27 and December 13, 2024) - Applicability of steady-burning requirement to auxiliary vehicle lamps.
- California Disabled Persons Act, Cal. Civ. Code § 54 et seq.
- 5 U.S.C. § 706(1) – Administrative Procedure Act, compulsion of unlawfully withheld agency action
- 28 CFR § 35.190 – DOJ mandatory duty to coordinate Title II enforcement
- *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002)
- *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004) – APA § 706(1) requires discrete, legally required agency action