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Light should guide us, not blind us.

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VIA EMAIL

City Administrator Carmen Chu
Office of the City Administrator
City and County of San Francisco
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**Re: Notice of Federal Motor Vehicle Safety Standard Non-Compliance and
ADA Title II Self-Evaluation Trigger — Steady-Burning Operation,
Luminance, and Siren Levels on City Vehicles**

Dear Administrator Chu:

The purpose of this letter is to place the City of San Francisco on actual notice that, under federal safety law 49 C.F.R. § 571.108, all auxiliary warning lamps on City vehicles must be steady-burning. The use of flashing or strobing auxiliary vehicle warning lamps causes confusion, impairs vision, increases reaction times, and poses a public safety risk.

On May 18, 2026, the Eighth Circuit Court of Appeals ruled in *Brake Plus NWA v. NHTSA*, No. 24-2951 (8th Cir. May 18, 2026) that Letters of Interpretation issued by the National Highway Traffic Safety Administration (NHTSA) may constitute Final Agency Action. The effect of this ruling is that the June 27, 2024 (NCC-231121-001) and December 13, 2024 (NCC-241023-001/TSEI-TIMA) Letters of Interpretation regarding NHTSA's long-standing steady-burning requirement for auxiliary lamps constitute Final Agency Action. NHTSA has not issued any exemptions from the steady-burning requirement other than those explicitly listed in 49 C.F.R. § 571.108. In particular, NHTSA has not issued exemptions for police, fire, ambulance, or utility vehicles operated by public entities.

The *Brake Plus* ruling directly confirms the steady-burning requirement, addressed in Section I below. The 49 C.F.R. § 571.108(S6.2.1) impairment provision extends that same steady-burning analysis to a second, equally concrete issue: the luminance (intensity) of auxiliary vehicle lamps, addressed in Section II. A third issue — the decibel level (intensity) of vehicle sirens, addressed in Section III — does not arise under FMVSS 108, which governs lighting equipment rather than audible warning devices. It arises instead under the Americans with Disabilities Act (ADA) effective-communication standard, 28 C.F.R. § 35.160, which independently applies to all three issues. We address each in turn.

I. Steady-Burning Operation: What the Brake Plus Ruling Confirms

FMVSS 108, S6.2.1 — captioned “Impairment” — provides that no additional lamp, reflective device, or other motor vehicle equipment may be installed that impairs the effectiveness of lighting equipment required by the standard. NHTSA's June 27, 2024 and December 13, 2024 Letters of Interpretation applied that impairment provision to auxiliary warning lamps operated in flashing mode, concluding that a flashing auxiliary lamp is not steady-burning and therefore impairs the required lighting equipment it accompanies. Before *Brake Plus NWA v. NHTSA*, No. 24-2951 (8th Cir. May 18, 2026), a public entity could plausibly treat that conclusion as informal guidance — persuasive, perhaps, but not a final, judicially enforceable determination of what S6.2.1 requires. That position is no longer available: the Eighth Circuit held that NHTSA interpretation letters of this kind carry the legal consequences of final agency action, meaning the June 27 and December 13, 2024 letters are the agency's binding, judicially reviewable statement of what S6.2.1 requires.

NHTSA has carved out specific, enumerated exemptions in 49 C.F.R. § 571.108; it has not exempted police, fire, ambulance, or utility vehicles operated by public entities. A City vehicle operating an auxiliary warning lamp in flashing or strobing mode is, as of May 18, 2026, operating equipment the agency's own final interpretation says impairs a federal lighting standard.

II. Luminance: The Same Impairment Provision Reaches Excessive Intensity

S6.2.1's impairment provision is not limited to the temporal pattern of an auxiliary lamp. A lamp that is steady-burning can still impair the effectiveness of required lighting equipment and impair the vision of the people it is meant to warn, if it is set at an intensity that produces glare — obscuring brake lamps or turn signals to following or oncoming drivers, and, for individuals with photosensitive epilepsy, migraine, or related neurological conditions, producing a disorienting effect independent of any flashing. Excessive luminance is a second and independent way an auxiliary lamp can impair required lighting equipment under 49 C.F.R. § 571.108(S6.2.1).

California law already supplies an objective benchmark the City can use to evaluate the question of maximum intensity, rather than treating luminance as an open-ended engineering judgment. Cal. Veh. Code § 25400(a) permits vehicles to be equipped with diffused, non-glaring lamps of not more than 0.05 candela per square inch. Converted to candela per square meter (nits) — $0.05 \text{ cd/in}^2 \div 0.00064516 \text{ m}^2/\text{in}^2$ — that figure is approximately 77.5 cd/m². Section 25400 sits within the Vehicle Code's article governing diffused decorative lighting generally, and we are not asserting that it independently caps auxiliary warning lamps or applies to them of its own force. We raise it because it is, to our knowledge, the only luminance-based ceiling the California Legislature has enacted for directly-viewed, vehicle-mounted lighting, and it offers the City a ready-made, judicially cognizable benchmark for evaluating whether a given auxiliary lamp's intensity crosses from a legitimate warning function into an impairment of vision and of the effectiveness of required lighting equipment — the same inquiry S6.2.1 already requires.

Under 28 C.F.R. § 35.160, a public entity must furnish communications that are as effective for individuals with disabilities as for others. A lamp intense enough to trigger a seizure, migraine, or disorientation response is not effective for the individual it disables; it is a barrier. The luminance question and the ADA effective-communication question converge on the same equipment, for the same reason the flashing question does.

III. Audible Warning: The 120-Decibel Siren Floor and Available Alternatives

Title 13 of the California Code of Regulations mandates that any device classified as a “siren” produce a minimum output of 120 decibels — roughly 1,000 times the intensity of the level at which NIOSH and OSHA recognize a risk of hearing damage. For an individual with autism spectrum disorder or a related sensory-processing disability, activation of a 120-decibel siren at close range is not merely unpleasant; it can be physically painful and neurologically incapacitating. Because the 120-decibel floor is a mandatory minimum for any device legally classified as a siren, the City cannot resolve this by simply directing staff to operate an existing siren more quietly — the classification itself sets the floor.

Cal. Veh. Code § 27002(b) provides a workable solution: it permits emergency vehicles to be equipped with a “Hi-Lo audible warning sound” as a supplemental or alternative device, and other devices — bells, directional beepers, low-frequency warning tones — are likewise not classified as “sirens” under California law and carry no mandatory minimum decibel requirement. A City that substitutes one of these already-lawful alternatives for a siren-classified device in appropriate circumstances is not petitioning any agency or seeking a waiver; it is choosing a different, already-lawful equipment category that the City can calibrate to a level that is audible for its warning purpose without the incapacitation risk described above. As with luminance, the audible-warning question is also an ADA effective-communication question under 28 C.F.R. § 35.160: a siren engineered to be maximally alerting to the general public can simultaneously be so intense that it is not effective — and is actively harmful — as a communication to a person with these disabilities.

IV. Consequences for the City

1. The steady-burning question is no longer open to informal dispute.

Because the Letters of Interpretation now constitute Final Agency Action, the City cannot treat NHTSA's steady-burning position as one reasonable reading among several. It is the operative federal standard, and it is judicially enforceable as such. Continued flashing-mode operation after this ruling is not a gray area; it is a known and confirmed departure from FMVSS 108.

2. Private rights of action are available to individuals harmed by non-compliant equipment.

Independent of any NHTSA enforcement action, private individuals may have their own avenues of relief against the City directly. Under Cal. Gov. Code § 815, a public entity is not liable for injury on an ordinary common-law negligence theory; liability must rest on a specific statute. Cal. Gov. Code § 835 supplies that statute here: a public entity is liable for

injury caused by a dangerous condition of its property where the entity had actual or constructive notice of the condition, under Cal. Gov. Code § 835.2, a sufficient time before the injury to have taken protective measures. “Public property” for these purposes includes personal property owned or controlled by the public entity, Cal. Gov. Code § 830(c) — which reaches the City's vehicles and the auxiliary lamps and sirens installed on them.

Actual notice under § 835.2 exists where a public entity had actual knowledge of the condition and knew or should have known of its dangerous character. This letter itself is designed to supply that actual notice: it places the City on the record that its auxiliary lamps are, for the reasons set out in Sections I and II above, out of compliance with FMVSS 108, and that its auxiliary lamps and sirens alike create the visual impairment, disorientation, incapacitation, and delayed-reaction-time hazards, and the ADA effective-communication barriers, described in Sections I through III. A City that receives this notice and takes no protective measures — bringing lamps into steady-burning operation, evaluating luminance against an objective benchmark, or evaluating siren classification and available alternatives — is thereafter operating with precisely the kind of actual notice § 835.2 is designed to capture.

Individuals with disabilities who are excluded, deterred, or physically harmed by such equipment may also have claims under the California Disabled Persons Act, Cal. Civ. Code §§ 54, 54.1, and 54.3, which provides for statutory minimum damages and does not require proof of intentional discrimination. And because equipment that is not an effective communication method for individuals with photosensitive epilepsy, migraine, PTSD, autism spectrum disorder, or related neurological and sensory disabilities may violate the effective-communication requirement of Title II, individuals may also have claims under 28 C.F.R. § 35.160. The City's continued operation of non-compliant equipment after actual notice of this letter is relevant to each of these theories.

V. The ADA Title II Self-Evaluation Trigger (28 C.F.R. § 35.105)

Under 28 C.F.R. § 35.105, a public entity must evaluate its current services, policies, and practices to identify and correct anything that is not compliant with Title II, and must do so whenever there is a material change in the legal or factual landscape bearing on that compliance. The *Brake Plus* ruling is exactly that kind of change: it converts what may previously have been treated as an open interpretive question — whether NHTSA's steady-burning position is binding — into a settled one. That is new information the City did not have, and could not have relied on, before May 18, 2026. It requires the City to evaluate, specifically, whether its light-based warning communications on police, fire, ambulance, and utility vehicles are lawful under FMVSS 108, and whether its light- and sound-based warning communications alike are effective under 28 C.F.R. § 35.160 for individuals with the disabilities described above — as to flashing-mode operation, as to luminance, and as to siren decibel levels.

Section 35.105(a)'s self-evaluation requirement is not satisfied by an evaluation that addressed the City's practices only as they existed years or decades ago. In *Tyler v. City of*

Manhattan, 849 F. Supp. 1429, 1437 (D. Kan. 1994), the court held it a disputed issue of fact whether the city's self-evaluation had addressed “*all of the City's current services, policies, and practices, and the effects thereof, to determine the degree of their compliance with the ADA*” — italicizing “all” and “current” as “the explicit requirement of 28 C.F.R. § 35.105(a).” Subsection (d) of the same regulation supplies the mechanism for that holding: the self-evaluation requirement applies to any policy or practice not included in a previous self-evaluation. If the City has never addressed auxiliary vehicle warning lamp luminance or siren decibel levels in any self-evaluation it has conducted, that gap does not close itself. Under § 35.105(d), as read in *Tyler*, the duty to evaluate those specific practices remains live and undischarged today. A self-evaluation that does not reach these specific equipment characteristics does not satisfy § 35.105 as to them.

VI. What We Are Asking the City to Do

A public entity that reviews and corrects these issues on its own initiative, before a complaint or lawsuit forces the issue, is in a fundamentally different position than one that does so only after being compelled by litigation. The underlying obligations are mandatory either way; what changes is the record. The former is documented good-faith compliance, undertaken with the benefit of actual notice. The latter is the same mandatory compliance, achieved only under judicial compulsion, with none of the credit for good faith. We raise these issues now, in writing, so the City has the opportunity to be the former rather than the latter. The purpose of this letter is to place the City on notice that 49 C.F.R. § 571.108(S6.2.1) requires that any auxiliary vehicle warning lamp be steady-burning, that light and sound communications must be effective for individuals with disabilities under 28 C.F.R. § 35.160, and that all current City services must be evaluated under 28 C.F.R. § 35.105. We are asking the City to take the following concrete steps and to confirm, in writing, that it has done so:

1. Confirm whether any City vehicles — including SFPD, SFFD, SF Public Works, SFPUC, or other City fleet vehicles — currently operate auxiliary warning lamps in flashing or strobing mode, rather than steady-burning mode, and bring any non-compliant lamps into steady-burning operation consistent with 49 C.F.R. § 571.108(S6.2.1);
2. Evaluate the luminance of the City's auxiliary vehicle warning lamps against an objective benchmark — for example, the approximately 77.5 cd/m² figure derived from Cal. Veh. Code § 25400(a) — and adjust any lamps whose intensity impairs the effectiveness of required lighting equipment or the vision of drivers and pedestrians;
3. Confirm whether City emergency vehicles are equipped with devices classified as “sirens” under Title 13 of the California Code of Regulations, and evaluate whether a non-siren alternative available under Cal. Veh. Code § 27002(b) is appropriate for circumstances where close-range exposure to a 120-decibel siren poses a risk to individuals with sensory-processing disabilities; and

4. Confirm that the City's ADA Title II self-evaluation under 28 C.F.R. § 35.105 specifically addresses auxiliary vehicle warning lamps and sirens as light- and sound-based communication devices.

We would ask that a member of your staff confirm receipt of this letter and provide a substantive response, including a point of contact for further discussion, within thirty (30) days.

Thank you for your attention to this letter.

Respectfully submitted,

/s/ Mark Baker
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Disclosure: An artificial intelligence system was utilized in the drafting of this letter. The author has exercised diligence in reviewing its contents and reserves the right to correct or supplement any errors that may be identified.