Soft Lights Foundation

Light should guide us, not blind us.

Soft Lights Foundation
9450 SW Gemini Dr., PMB 717836
Beaverton, OR 97008
www.softlights.org

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VIA EMAIL

Carolyn Coleman
Executive Director and Chief Executive Officer
League of California Cities
ccoleman@calcities.org

Re: ADA Title II Compliance Gap Affecting Member Cities — Flashing LED Warning Lamps on City Vehicles, Rectangular Rapid Flashing Beacons, and Illuminated Traffic Control Signs

Dear Ms. Coleman:

I write on behalf of the Soft Lights Foundation to bring to Cal Cities' attention an Americans with Disabilities Act compliance problem that we believe is common to a large number of your member cities, that has begun to produce federal litigation, and that in one of its three forms can be corrected at essentially no cost. We are writing to Cal Cities because the problem is structural: it arises from a practice member cities have adopted in substantially the same form, for the same reasons, over the same period.

The Soft Lights Foundation is a nonprofit organization focused on the health, safety, and accessibility impacts of high-intensity lighting. We research and advocate on the effects of LED lighting and flashing signal devices on individuals with photosensitivity, seizure disorders, autism spectrum disorder, and related conditions, and we engage with government agencies and public entities on regulatory and accommodation matters arising from those effects.

I. The Two Obligations at Issue

Title II of the ADA imposes two distinct duties on a public entity, operating at different times and through different mechanisms.

The first is systemic. 28 C.F.R. § 35.105 requires every public entity to evaluate its current services, policies, and practices for consistency with Title II and to make any modifications that evaluation shows are required. The duty does not wait for a complaint, and it reaches practices that no earlier evaluation addressed. See 28 C.F.R. § 35.105(d); *Tyler v. City of Manhattan*, 849 F. Supp. 1429 (D. Kan. 1994). High-intensity LED signaling devices are, for most cities, exactly such a practice. Whatever self-evaluation a city performed in the years following the ADA's enactment could not have considered a lighting technology that did not then exist in its current municipal form.

The second is individualized. Once a person requests an accommodation, or the need for one is obvious, the entity "is required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation," and speculation that a proposed accommodation is infeasible does not satisfy that requirement. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1139 (9th Cir. 2001). Where the device at issue exists solely to convey information to the public, 28 C.F.R. § 35.160 applies with full force: the entity must give primary consideration to the individual's requested auxiliary aid or service, § 35.160(b)(2), and any undue burden determination must be made by the entity head or a designee, measured against the entity's resources, and documented in a written statement of reasons, § 35.164.

Duvall also supplies the standard governing compensatory damages: deliberate indifference, meaning knowledge that harm to a federally protected right is substantially likely together with a failure to act on that likelihood. *Duvall*, 260 F.3d at 1138–39. The Supreme Court confirmed last year that this is the majority rule nationally. *A.J.T. v. Osseo Area Schools*, 605 U.S. 335 (2025). A city that has neither evaluated the practice nor investigated a request, after repeated written notice, stands in a materially different position on the knowledge element than a city that investigated and reached a reasonable but incorrect conclusion.

II. The Devices

Three categories of municipal equipment are at issue: auxiliary flashing warning lamps on police, fire, and utility vehicles; rectangular rapid flashing beacons (RRFBs) at pedestrian crossings; and LED-illuminated or beacon-equipped traffic control signs, including flashing stop signs and warning signs. None of these is ambient lighting. Each exists for no purpose other than to communicate a specific, time-sensitive message to a person on the roadway or in a crosswalk, which is what brings them within § 35.160 rather than only within the general self-evaluation duty.

The vehicle-lamp category carries an additional federal problem independent of the ADA. FMVSS No. 108, 49 C.F.R. § 571.108(S6.2.1), prohibits installed equipment that impairs the effectiveness of required lighting, and NHTSA has interpreted the standard to require auxiliary lamps to be steady-burning, with the sole exception of auxiliary lamps supplementing required lamps that flash. NHTSA restated that position most recently in its December 13, 2024 Letter of Interpretation, and defended it in litigation before the Eighth Circuit in *Brake Plus NWA, Inc. v. U.S. Department of Transportation, No. 24-2951* (8th Cir. May 18, 2026). This category also happens to be the least expensive to correct: the LED hardware already installed on most fleets is configurable and generally capable of steady-burning operation, so the correction is a policy decision rather than a procurement.

III. Current Litigation and Why It Concerns Cal Cities

Mark Baker, in his individual capacity as a person affected by these devices and as a pro se litigant — not the Foundation — has filed *Baker v. City of Woodland*, No. 2:26-cv-00091-DAD-AC, in the United States District Court for the Eastern District of California. The operative complaint is structured around the § 35.105 self-evaluation and *Duvall* failures. Additional actions against other California cities are in preparation. Pre-litigation notice concerning these devices has been provided to several city attorneys, to county counsel, and to a joint powers risk authority.

The Foundation does not raise this to advertise litigation, and we would prefer that none of it be necessary. We raise it because the cost structure of ADA Title II litigation is unfavorable to cities in ways that are not obvious from the outside, and because a city facing these claims will bear those costs whether or not it ultimately prevails.

Fee shifting under 42 U.S.C. § 12205 is asymmetric in practice. A prevailing plaintiff ordinarily recovers fees; a prevailing defendant recovers only on a showing that the claim was frivolous, unreasonable, or without foundation. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978); *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1190 (9th Cir. 2001). Courts are especially unlikely to make that finding where a claim rests on established duties rather than a novel theory. The practical scale is illustrated by *Payan v. Los Angeles Community College District, No. 24-1809* (9th Cir. Mar. 11, 2026), where a $242,500 compensatory award produced a plaintiffs' fee and expense request of more than $7 million after nearly nine years and two jury trials — a figure that says nothing about what the district itself paid its own outside counsel over the same period.

The exposure is also structural rather than individual. A city specifies its RRFBs, its signage, and its fleet warning lamps once, jurisdiction-wide. That is the shape of a Rule 23(b)(2) class claim, not a dispute about one person at one intersection, and injunctive relief on such a claim requires no showing of intent at all. *Willits v. City of Los Angeles*, 925 F. Supp. 2d 1089 (C.D. Cal. 2013), produced a settlement requiring more than $1.367 billion in sidewalk remediation over thirty years without any finding that the City had acted intentionally. Risk pooling offers less protection against this than against ordinary tort exposure, because a common uncorrected practice across pool members is a correlated risk that a pool aggregates rather than diversifies.

IV. What We Are Asking of Cal Cities

We are asking for Cal Cities' assistance in getting this information in front of the people at member cities who can act on it. Specifically, we ask that Cal Cities consider:

- Distributing the two enclosed position papers to member cities, and in particular to city attorneys, ADA coordinators, public works directors, and risk management staff.
- Advising members that a current § 35.105 self-evaluation should expressly address flashing and high-intensity LED signaling devices, and that a self-evaluation completed before these devices were deployed does not reach them.

- Advising members that an accommodation request concerning these devices triggers the individualized investigation *Duvall* and §§ 35.160–35.164 require, and that a conclusory denial letter, issued without consultation of the requester, without technical expertise, and without a documented undue-burden analysis at the appropriate level of authority, does not satisfy it.
- Addressing the subject in Cal Cities' educational programming — the City Attorneys' Department, a conference session, or Western City — so that members hear it before they hear it from a complaint.
- Directing members' attention first to the vehicle-lamp category, where the correction is a configuration and policy change rather than a capital project, and where the exposure can therefore be reduced immediately and at nominal cost.

The Foundation is available to brief Cal Cities staff or the City Attorneys' Department, to answer technical questions about the devices and the underlying photometric measurements, and to discuss what a compliant self-evaluation of these practices would examine. We would welcome that conversation.

Enclosed Position Papers

Self-Evaluation, Individualized Inquiry, and the Architecture of ADA Title II Compliance (September 3, 2026):
https://www.softlights.org/wp-content/uploads/2026/09/ADA-Title-II-Compliance.pdf

Federal Preemption of State Authorization for Flashing Auxiliary Vehicle Warning Lamps: The Steady-Burning Requirement of FMVSS No. 108 (August 31, 2026):
https://www.softlights.org/wp-content/uploads/2026/09/Steady_Burning_Preemption_White_Paper-1.pdf

Thank you for your consideration.

Respectfully submitted,

/s/ Mark Baker
President, Soft Lights Foundation
mbaker@softlights.org