



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

March 29, 2024

BY EMAIL

Jacqueline McMahon-Smith
Marjorie McQueen
Brendan Brophy
New York Police Department
Legal Bureau
Inspector General Coordination Unit
375 Pearl Street, 16th Floor
New York, NY 10038

Re: Americans with Disabilities Act: Inquiry into Compliance with Title II

Dear Ms. McMahon-Smith, Ms. McQueen, Mr. Brophy:

We write to report the findings of the United States Attorney's Office for the Southern District of New York's ("SDNY") investigation of the New York City Police Department's ("NYPD") practices for addressing official vehicles and vehicles with New York City-issued parking permits ("City Vehicles") that are parked on public sidewalks and crosswalks, including those servicing public buildings, in manners that impede access to individuals with disabilities. During our investigation, we assessed the NYPD's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations, 28 C.F.R. Part 35. Under the ADA, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity. 42 U.S.C. § 12132. The NYPD is a public entity under the ADA and thus subject to the statute's non-discrimination mandate. 42 U.S.C. § 12131(1)(B).

Pursuant to 42 U.S.C. § 12133 and 28 C.F.R. § 35.172(b), the Department of Justice (of which SDNY is a component) is authorized to investigate this matter, which is related to law enforcement. Our investigation revealed violations of the ADA and this Letter of Findings sets out our findings of fact, conclusions of law, and the actions necessary to correct those violations. 28 C.F.R. § 35.172.

I. INVESTIGATION

In response to information received by the Department of Justice, SDNY opened an investigation into the NYPD's practices for addressing City Vehicles parked on public sidewalks and crosswalks, and the NYPD has cooperated with the investigation.

SDNY has reviewed the information provided by the NYPD from May 10, 2023, through October 5, 2023, in response to our requests for information. This information included, but was not limited to: NYPD policies, procedures, and training materials for complying with the ADA,

for parking City Vehicles, and for enforcing applicable New York City laws and regulations and NYPD policies concerning illegal parking; NYPD data regarding disciplinary actions taken in response to employee violations of parking-related laws and policies; and New York City data regarding the NYPD's response to civilian complaints regarding illegal parking of City Vehicles. In addition, SDNY has reviewed publicly available information on New York City law and regulations, on the NYPD's enforcement practices with respect to illegal parking of City Vehicles, and on the prevalence of City Vehicles parked in manners that impede the access of people with disabilities to pedestrian pathways.

II. STATUTORY AND REGULATORY BACKGROUND

Congress enacted the ADA in 1990 “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). In doing so, Congress recognized that people with disabilities “continually encounter various forms of discrimination,” including “the discriminatory effects of architectural [and] transportation . . . barriers” and the “failure to make modifications to existing facilities and practices.” *Id.* § 12101(a)(5). The House Report accompanying the ADA explains that “[t]he employment, transportation, and public accommodations sections of this Act would be meaningless if people [with disabilities] were not afforded the opportunity to travel on and between the streets.” House Report 101-485, 1990 U.S.C.C.A.N. at 367 (1990). To combat this longstanding discrimination, Congress enacted Title II of the ADA, which prohibits discrimination against individuals with disabilities by public entities through a simple mandate:

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity . . .

42 U.S.C. § 12132. The ADA defines a “public entity” to include any department or agency of a local government, like the NYPD. *Id.* § 12131(1)(B).

The ADA directs the Department of Justice to promulgate regulations implementing Title II, *see* 42 U.S.C. § 12134(a), and the Department of Justice has done so at 28 C.F.R. Part 35. Relevant to our investigation, 28 C.F.R. § 35.149 provides that “no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity.”¹ To ensure that mandate is met, Department of Justice regulations further provide that “[a] public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.” *Id.* § 35.150(a).

¹ The pedestrian grid is a “service[], program[], or activit[y] of a public entity.” *See Am. Council of the Blind v. City of New York*, 495 F. Supp. 3d 211, 231 (S.D.N.Y. 2020) (“The City’s maintenance of . . . the pedestrian grid plainly constitutes a service, program, or activity of a public entity.”). Furthermore, public sidewalks and crosswalks, which together comprise the pedestrian grid, are “facilities” under the ADA. *See* 28 C.F.R. § 35.104 (facilities include “any portion of buildings, . . . roads, walks, passageways, parking lots, . . .”).

Accessibility extends beyond initial construction; the Department of Justice’s regulations state that “[a] public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities.” *Id.* § 35.133(a). “Failure of [a] public entity to ensure that accessible routes are properly maintained and free from obstructions” violates the ADA. 28 C.F.R. Part 35, App. B, § 35.133. However, 28 C.F.R. § 35.133 “does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.” 28 C.F.R. § 35.133(b). But “[w]hile temporary obstructions do not violate the ADA, obstructions that persist beyond a reasonable period of time do violate the statute.” *Cohen v. City of Culver*, 754 F.3d 699, 699 (9th Cir. 2014); *see also* Americans with Disabilities Act ADA Update: A Primer for State and Local Governments, https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html (last visited Sept. 29, 2023) (“Temporary access interruptions . . . are permitted, but must be remedied as soon as possible and may not extend beyond a reasonable period of time.”).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The City of New York (and, more specifically, the NYPD) has failed to ensure that the pedestrian grid is “readily accessible to and usable by individuals with disabilities,” 28 C.F.R. §§ 35.133(a), 35.150, because City Vehicles frequently park on sidewalks and in crosswalks. As a result, the City of New York has not “ensure[d] that accessible routes are properly maintained and free from obstructions.” 28 C.F.R. Part 35, App. B, § 35.133. In this respect, SDNY has identified two principal areas of concern that have resulted in obstructions persisting “beyond a reasonable period of time.” *Cohen*, 754 F.3d at 699. First, NYPD vehicles and the personal vehicles of NYPD employees frequently obstruct sidewalks and crosswalks in the vicinity of NYPD precincts. Second, City Vehicles are often permitted to park on sidewalks and crosswalks throughout the City beyond a reasonable period of time. Together, these parking practices have made it such that the City’s pedestrian grid is not “readily accessible to and usable by individuals with disabilities.” 35 C.F.R. § 35.150(a). The facts and law that inform SDNY’s conclusions on these areas are set forth in more detail below.

Parking Adjacent to NYPD Precincts: The information that SDNY has reviewed to date establishes that the sidewalks and crosswalks adjacent to NYPD precincts are subject to frequent obstructions by both the private and police vehicles of NYPD members, resulting in inaccessibility of the pedestrian grid. Most notably, a recent study identified parking behaviors at 91% of the NYPD’s precincts that resulted in obstructions to sidewalks and crosswalks with the potential to render those pathways inaccessible. *See* Marcel E. Moran, *Authorized Vehicles Only: Police, parking, and pedestrian access in New York City*, Transp. Research Interdisciplinary Perspective 19 (2023). NYPD officials have publicly acknowledged that this parking behavior is a problem around NYPD precincts. *See, e.g.*, Evan Simko-Bednarski, N.Y. DAILY NEWS, *Harlem man’s 232 complaints about police parking abuse around precinct brought no change; NYPD brass admit problem but are unable to fix it* (May 8, 2023) (quoting NYPD Chief of Patrol stating: “As a three-time commander of three precincts, it’s probably one of my biggest pet peeves, parking on sidewalks. It’s not right.”). And the obstructions caused by sidewalk and crosswalk parking are not isolated or temporary; NYPD-affiliated vehicles park on sidewalks and in crosswalks around precincts almost constantly. *See, e.g., id.* (Councilman Lincoln Restler: “I live on the streetcorner of a precinct. . . . Never in my entire life have I not seen cars illegally parked on the sidewalk. . . . I

have nine precincts in my district – it is ubiquitous at every single one.”); *cf. Cohen*, 754 F.3d at 699 (“[O]bstructions that persist beyond a reasonable period of time . . . violate the [ADA].”).

Based on the productions we have received to date, NYPD policy for parking around precincts appears to be inadequate to ensure the accessibility of the City’s pedestrian grid around precincts. The only operative document produced by the NYPD related to parking of City Vehicles around precinct houses is Operations Order # 21: *Operational Guidelines for Americans with Disabilities Act (ADA) Compliance* (dated May 10, 2022). That document, in relevant part, states that “[p]recinct paths leading to wheelchair ramp and/or lift (if any) should be free of obstacles and barriers, including snow, ice, garbage, vehicles, etc.” But the obligation to maintain accessibility extends beyond access to NYPD stationhouses. Rather, pedestrian pathways must *themselves* be “readily accessible to and useable by individuals with disabilities.” 28 C.F.R. §§ 35.133(a), 35.150(a); *see also Am. Council of the Blind*, 495 F. Supp. 3d at 231 (“The City’s maintenance of . . . the pedestrian grid plainly constitutes a service, program, or activity of a public entity.”). Individuals with disabilities must be able to access the pedestrian pathways around precincts for any reason (for example, to visit nearby businesses or just to pass by); it is not enough that a precinct itself is accessible.

In addition to this precinct-specific policy, local law appears to prohibit parking of vehicles on public sidewalks and crosswalks around precincts in a manner that would impair accessibility. N.Y.C. Ad. Code § 19-162.5 (“No vehicle operated on behalf of the city shall obstruct a . . . sidewalk [or] crosswalk . . . except otherwise permitted by law.”); *see also* *Finest Message: Parking of Vehicles Resulting in a Safety Violation* (dated Apr. 2023) (“Members of the service are reminded that there shall be no parking in the following locations/conditions (with or without a restricted parking permit): . . . D. Sidewalks; E. Crosswalks and Driveways . . .”). However, the NYPD does not appear to have implemented this law or corresponding NYPD policy around its precincts. SDNY has accordingly placed little weight on these factors in assessing the accessibility of the pedestrian grid around stationhouses. *Cf. Chapman v. Pier 1 Imports (U.S.) Inc.*, 779 F.3d 1001, 1008 (9th Cir. 2015) (noting that, under analogous regulations implementing Title III of the ADA, “policies and procedures” that are “honored in the breach” do not obviate ADA violations).

General Parking of City Vehicles: In addition to the parking of NYPD vehicles around precincts, the City of New York has a broader problem of allowing City Vehicles to park in manners that impede accessibility throughout the City. The City of New York has acknowledged this issue legislatively; it enacted a slate of City parking-permit reforms at the beginning of 2020. *See* Local Laws 1 through 13 of 2020. Nevertheless, public information confirms that the City of New York still often allows for obstructions to the pedestrian grid caused by City Vehicles parked on sidewalks and crosswalks to persist “beyond a reasonable period of time,” *Cohen*, 754 F.3d at 699. *See, e.g.*, App’x A (documenting City Vehicles parked in manners that impede accessibility against which the City declined to take enforcement action). Indeed, City employees appear to commute to work and park their City Vehicles on sidewalks or in crosswalks for entire workdays, sometimes even longer. *See, e.g.*, Kevin Duggan, *‘They Don’t Care’: Cops, Placard Perps Block Disabled Drop-Off Zones*, STREETS BLOG NYC (Jan. 26, 2024) (“A sedan with city plates was parked in the [disability drop-off zone] twice when Streetsblog checked over the last week, and it once had its windshield covered in snow days after the most recent snowfall, indicating it likely doesn’t move much.”).

While of course “there are many ways [a public entity] may meet its statutory obligations” under the ADA, *Disabled in Action v. Bd. of Elections in New York City*, 752 F.3d 189, 206 (2d Cir. 2014), it bears emphasis that in this investigation, SDNY has noted that the NYPD and City’s own “policies and procedures” for dealing with City Vehicles parked in manners that could violate the ADA have been “honored in the breach,” contributing to the persistent obstruction of City sidewalks and crosswalks. *Chapman*, 779 F.3d at 1008. For example, although local law provides that “[n]o vehicle operated on behalf of the city shall obstruct a . . . sidewalk [or] crosswalk,” N.Y.C. Ad. Code § 19-162.5, New York City data shows that the NYPD infrequently enforces this law. Reports created pursuant to Local Law 1 of 2020 show that, between 2020 and 2023, the NYPD has issued only approximately 600 violations per year for city-permitted vehicles parked on sidewalks or in crosswalks—less than two per day. Other data sources suggest that this significantly understates the number of City Vehicles obstructing access to the pedestrian grid. For example, data reported by New York City pursuant to Local Law 8 of 2020 (which requires the publication of reports regarding the number of complaints of illegal parking of vehicles operated on behalf of the city) shows that the NYPD received 5,499 civilian complaints alone related to city-permitted vehicles parked on sidewalks between January 2021 and July 2023. The NYPD issued summonses in response to only 2.8% of those complaints, despite issuing summonses in response to 10.7% of complaints related to illegal parking on sidewalks for non-city-permitted vehicles over the same period, according to publicly available 311 data.

NYPD training materials deemphasize the need to ensure that City Vehicles do not impede access to the pedestrian grid. Training for traffic enforcement personnel related to parking summonses is silent on the requirements applicable to parking for individuals with city-issued permits, despite those training materials including sections about diplomatic parking permits and parking permits for individuals with disabilities. Training materials also emphasize officer discretion not to issue summonses where officers determine that a violation would not cause individuals to feel unsafe or uncomfortable, without any discussion of how certain parking behavior could impede the safety and comfort of people with disabilities.

Furthermore, the City of New York has been taking away resources from initiatives designed to combat parking practices that impact the accessibility of the pedestrian grid. In 2020, then-Mayor de Blasio eliminated the NYPD’s placard enforcement team, which was tasked with “cracking down on public officials, especially cops, parking in front of fire hydrants, in crosswalks, in bike lanes and in bus lanes, and even on sidewalks. Julianne Cuba, *STREETSBLOG*, *De Blasio Cuts Two Placard Abuse Units That Did Nothing, Saying, ‘But Wait ‘til Next Year!’* (July 10, 2020). More recently, the NYPD failed to fully implement several local laws designed to curb illegal parking, including Local Law 6 of 2020 (which required the NYPD to study illegal parking-permit use at several sites) and Local Law 13 of 2020 (which required the NYPD to report on instances where City Vehicles were towed for blocking crosswalks or sidewalks).

Nor does NYPD take measures to hold officers who misuse City Vehicles accountable. NYPD policies provide that illegal parking of a NYPD or private vehicle results in a command discipline from oral admonishment to a 5-day penalty. Furthermore, local law requires city-issued parking permits to be revoked upon three instances of misuse. Nevertheless, you have produced documents from the NYPD’s Internal Affairs Bureau, Chief of Department Investigative Review

Section, Patrol Borough Investigations Unit, and Professional Standards Bureau that show only eighty instances of discipline or permit revocation from 2021 to 2023.

* * *

The net effect of City Vehicles parked on sidewalks and crosswalks is a pedestrian grid that is often inaccessible to people with disabilities. We have spoken with numerous individuals with disabilities who have explained their personal experience with the difficulty navigating around City Vehicles parked on sidewalks. Almost everyone reported that they were often required to navigate the streets (while risking injuries from vehicles) in areas around precincts where they found the sidewalks to be most often blocked. Several reported that they had been injured trying to move off the sidewalk in areas where the curb cuts had been blocked by parked City Vehicles. And many reported that no matter what efforts they made to resolve the problem—contacting the local precincts, submitting 311 reports, or attending community board meetings—things had either not improved or gotten worse in recent years.

As discussed above, the ADA requires New York City’s pedestrian grid to be “readily accessible to and useable by individuals with disabilities.” 28 C.F.R. §§ 35.133(a), 35.150(a). To meet this mandate, a “public entity [must] ensure that accessible routes are properly maintained and free from obstructions” violates the ADA. 28 C.F.R. Part 35, App. B, § 35.133. But the City of New York and the NYPD often allow City Vehicles to block access to public pathways “beyond a reasonable period of time.” *Cohen*, 754 F.3d at 699. Indeed, the NYPD fails to remove obstructions even in response to specific complaints from community members. *See* App’x A.² As has been well-documented, this has resulted in pervasive obstruction of New York City sidewalks and crosswalks that often render the pedestrian grid inaccessible. *See, e.g.,* Marcel E. Moran, *Authorized Vehicles Only: Police, parking, and pedestrian access in New York City*, Transp. Research Interdisciplinary Perspective 19 (2023).

IV. RECOMMENDED REMEDIAL MEASURES

To remedy the violations discussed above and protect the civil rights of New York City pedestrians with disabilities, the City of New York and NYPD must reform their practices with respect to the parking of City Vehicles on sidewalks and crosswalks. These reforms must include oversight to ensure this objective is accomplished. To that end, SDNY recommends that the NYPD:

² Importantly, individuals with disabilities should not be forced to complain to the NYPD to ensure the accessibility of their routes. As explained by the Ninth Circuit:

[Barriers] are not intended to be placed there—and to stay there—until a disabled [person] finds that they are making it impossible to use the facility. In other words, the barrier is not “temporary” if its placement requires a disabled person to interrupt his use of the facility, wander around the facility trying to find a[n] [] employee capable of moving the obstruction, and then request that the barrier be removed.

Chapman, 779 F.3d at 1009. In other words, the NYPD’s policies and practices for preventing City Vehicles from obstructing the accessibility of public pathways should be self-sufficient, rather than reliant on civilian complaints.

1. Adopt a parking policy for City Vehicles around precincts that ensures accessibility of the pedestrian grid in areas around precincts consistent with Chapter 4 of the Access Board's *Guide to the ADA Accessibility Standards*, including provisions that ensure that the parking policy will be enforced.
2. Modify training and procedures related to parking-related infractions to ensure that traffic enforcement officers are aware of the effect that parking on sidewalks and crosswalks has on the accessibility of the pedestrian grid.
3. Modify training materials on parking enforcement to specifically address parking practices for City Vehicles.
4. Establish a procedure overseen by the NYPD's ADA Coordinator or her delegee by which members of the public can submit complaints when they have reported City Vehicle parking that obstructs the accessibility of pedestrian pathways through an appropriate channel (like 311), but the NYPD has declined to take action to remedy the obstruction. For all substantiated complaints, such procedure should provide for penalties to be issued both against the driver of the City Vehicle and the responding officer who declined to take action to remedy the condition.
5. For a period of three years, provide quarterly reports to SDNY identifying all complaints received by the NYPD pursuant to the procedure established under Paragraph 4, all evidence supporting each complaint, and the NYPD's resolution of each complaint, including the remedy imposed by the NYPD with respect to the driver and responding officer, if any.

V. CONCLUSION

We appreciate your cooperation in this investigation and remain interested in working with you to resolve it. Please contact the undersigned within fourteen days of receipt of this letter to confirm that you remain interested in working with us to resolve these issues. In the event we determine that we cannot secure compliance voluntarily to correct the deficiencies identified in this letter, the Attorney General may initiate a lawsuit pursuant to the ADA. *See* 42 U.S.C. § 12133. We would prefer, however, to resolve this matter by working with you to negotiate a court-enforceable agreement that brings the City of New York and NYPD's practices into compliance with the ADA.

Very truly yours,

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