

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: March 15, 2019
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Accessibility Requirements and the Proposed Ordinance Adopting Parking Regulations for Development in Transit Priority Areas

INTRODUCTION

At the City Council meeting of March 4, 2019, an ordinance was introduced that would adopt parking regulations applicable to new construction of multiple dwelling residential development in a newly-defined subset of transit priority areas (TPA Ordinance). Among the regulations is the elimination of minimum parking requirements, which gives developers the option to build housing without providing for any parking on-site.

QUESTION PRESENTED

Does the TPA Ordinance's elimination of minimum parking requirements violate either federal or state accessibility regulations?

SHORT ANSWER

No. The TPA Ordinance's elimination of minimum parking requirements does not violate federal or state accessibility regulations because accessible parking is not required where no parking is provided.

ANALYSIS

I. FEDERAL LAW

The two federal laws relevant to accessibility with regard to parking at private residential development are the Fair Housing Act, codified at 42 U.S.C. §§ 3601-3619, and the Americans with Disabilities Act of 1990, as amended by the ADA Amendment Act of 2008, 42 U.S.C. §§ 12101-12213 (collectively, the ADA).

A. Fair Housing Act

The Fair Housing Act prohibits discrimination in housing on the basis of disability, among other factors. The Act defines discrimination to include the "failure to design and construct [covered] dwellings in such a manner that the public use and common use portions of such dwellings are

readily accessible to and usable by handicapped persons.”¹ 42 U.S.C. § 3604(f)(3)(C)(i). Page 2.23 of the Fair Housing Act Design Manual requires that “a minimum of two percent of the parking spaces serving covered dwelling units be made accessible and be located on an accessible route.” The accessibility requirement is a percentage of the parking that is provided and thus would not apply when there is no parking provided at all.

B. Americans with Disabilities Act

The ADA applies to private housing in those cases where portions of the housing qualify as public accommodations. *See* 28 C.F.R. §§ 36.104, 36.207. In general, public accommodations are privately-operated facilities that are open to business to the public. An example would be an apartment complex’s leasing office. The ADA’s accessibility standards for the design and construction of facilities are set forth in the 2010 ADA Standards for Accessible Design (ADA Standards). Section 208.1 of the ADA Standards addresses the minimum number of required accessible parking spaces: “*Where parking spaces are provided*, parking spaces shall be provided in accordance with 208.” (Emphasis added.) Table 208.2 shows the minimum number of required accessible parking spaces correlating to the total number of parking spaces that are provided in a parking facility. The Table shows the minimum requirement of one accessible space for parking facilities that have from 1 to 25 parking spaces.

ADA Standards section 208.2.3, which specifically addresses parking spaces at residential facilities, requires: “*Where at least one parking space is provided* for each residential dwelling unit, at least one parking space complying with 502 shall be provided for each residential dwelling unit required to provide mobility features complying with 809.2 through 809.4.” (Emphasis added.) Section 208.2.3.3 continues: “*Where parking spaces are provided* for persons other than residents, parking shall be provided in accordance with Table 208.2.” (Emphasis added).

The ADA regulations expressly state that *where* parking is provided, accessible parking must be provided. The provisions do not require accessible parking to be provided when there is no provision of any parking.

II. STATE LAW

California’s accessibility regulations regarding new construction are similar, and in some cases, identical to the federal requirements. The California Building Code, Title 24, part 2 of the California Code of Regulations (Title 24), sets forth the accessibility requirements for new housing construction. Chapter 11A of Title 24 applies to private housing, such as multiple dwelling residential development. Section 1109A.1 provides: “Each parking facility provided for covered multifamily dwellings and facilities (e.g., swimming pools, club houses, recreation areas and laundry rooms) that serve covered multifamily dwellings shall provide accessible parking as required by this section.” The provision of accessible parking presumes and is conditioned on the provision of some parking.

¹ The Fair Housing Act’s regulations define “covered multifamily dwellings” as “buildings consisting of 4 or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of 4 or more dwelling units.” 24 C.F.R. § 100.201.

Chapter 11B of Title 24 applies to those portions of private housing that qualify as public accommodation (such as the leasing office of an apartment complex). Chapter 11B's requirements are identical to those in ADA Standards section 208 (which is reflected in the use of parallel section references). For example, Section 11B-208.1 of Title 24 and Section 208.1 of the ADA Standards both state: "Where parking spaces are provided, parking spaces shall be provided in accordance with Section [11B-208 or 208.]" State accessibility requirements for new housing construction track, if not match, those under the ADA. As under federal law, accessible parking is not required where no parking is provided.

CONCLUSION

By eliminating minimum parking requirements for new multiple dwelling residential development in certain transit priority areas, the TPA Ordinance gives developers the ability to build housing that does not include any parking on-site. The federal Fair Housing Act, the ADA, and California's Title 24 regulations do not require accessible parking to be incorporated in the design and construction of new private housing when the entire housing development is devoid of parking. Accordingly, the TPA Ordinance's elimination of minimum parking requirements does not violate federal or state accessibility regulations.²

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² As introduced, the TPA Ordinance does not prohibit the provision of parking; developers retain the option to provide accessible parking spaces. In the future, if the Council wishes to amend the TPA Ordinance to require developers to provide a minimum amount of accessible parking, this Office can provide further analysis of the legal implications.