

# **THE FAILURE OF HANDICAPPED PARKING REGULATION IN THE CITY OF SAN DIEGO**

## ***SUMMARY***

After investigating and finding apparent violations in the location of handicapped parking places in commercial parking lots in the City of San Diego, the Grand Jury turned their attention to the city agencies responsible for ensuring handicapped parking is located according to code. The Jury found indifference, poor training, and a low priority placed on enforcement of the requirements regarding the placement of handicapped, or accessible parking by the Development Services Department. The situation was found to be even worse within the Neighborhood Code Compliance Department. Their solution for handicapped parking places at one location where the parking spaces were not distributed among the several entrances, as required, was to require an entrance sign to be removed. The Development Services Department and the Neighborhood Code Compliance Department have the authority and responsibility to do their jobs. The question is why is enforcement not being done in either department?

## ***PURPOSE***

The purpose of the Grand Jury's investigation was to determine if the placement of handicapped parking places in the City of San Diego is in conformance with federal, state and local laws and who is responsible for monitoring code enforcement.

## ***PROCEDURES EMPLOYED***

- Reviewed the Americans with Disabilities Act.
- Determined which laws applied to handicapped parking, including the State Building Code.
- Obtained a legal opinion from County Counsel concerning interpretation of the law as it applies to the placement of handicapped parking.
- Randomly selected and photographed nine locations where handicapped parking was required.
- Obtained from the Development Services Department the approved construction plans for the selected locations.
- Interviewed Development Services Department heads for an overview of procedures and reviews for handicapped parking and to determine which city employees approved the construction plans for the selected locations.
- Interviewed each Structural Engineering Associate (Plan Checker) that approved the construction plans for the selected sites.

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- Interviewed each inspector who gave final approval to the selected sites.
- Re-interviewed the department head to determine whether we had overlooked any pertinent information.
- Interviewed the department heads of the Neighborhood Code Compliance Department for an overview of Neighborhood Code Compliance and to determine which city employees were responsible for enforcement of the State Building Code as it applied to the location of handicapped parking places.
- Interviewed the person charged with enforcement of handicapped parking laws for the Neighborhood Code Compliance Department.

### *DISCUSSION*

The scope of this report by the Grand Jury has been deliberately limited to the location and placement of handicapped parking spaces as required by code and the Americans with Disabilities Act (ADA), and does not address any other issue related to accessible or handicapped parking.

There are both State and Federal laws that define handicapped parking requirements. In 1990, Congress enacted ADA and its provisions were incorporated into the State Building Code and in Title 24 of the California Code of Regulations (Code). The primary difference between the two laws is that the ADA is civil rights legislation enforced by the United States Department of Justice and applies to all existing facilities. In contrast, the California Building Code and Title 24 applies when alterations, new additions or new construction takes place. Both can be applied at the same time. For instance, if remedial work is performed to eliminate a physical barrier, the more stringent of ADA accessibility guidelines or Title 24 shall apply.<sup>1</sup>

The President of the United States acknowledged the importance of the passage of the ADA by the following statement: "This past week, our country marked the 11th anniversary of the Americans with disabilities act. I'm proud that it was my father who signed that landmark legislation into law. And all Americans can take pride in the changes the ADA has brought into the lives of millions of citizens with disabilities. Because of that law, Americans with disabilities have gained greater access to public places. They have more options in choosing their homes, using public transportation, traveling and staying in hotels."<sup>2</sup>

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<sup>1</sup> The City of San Diego Disability Services ADA Requirements, <http://www.sandiego.gov/disability-services/adareq.shtml>.

<sup>2</sup> Radio address by President George W. Bush, July 28, 2001

Provisions of the ADA and Title 24 provide:

*“Each lot or parking structure where parking is provided for the public as clients, guests or employees shall provide accessible parking as required by this section. Accessible parking spaces serving a particular building shall be located on the **shortest accessible route of travel from adjacent parking to an accessible entrance**. In parking facilities that do not serve a particular building accessible parking shall be located on the **shortest accessible route of travel to an accessible pedestrian entrance of the parking facility**. In buildings with multiple accessible entrances with adjacent parking, **accessible parking spaces shall be dispersed and located closest to the accessible entrances....**”<sup>3</sup> (emphasis added)*

While the Code gives the building official the power to render interpretations<sup>4</sup>, the word “shall” is defined in the California Building Code as a **mandatory** provision;<sup>5</sup> therefore the provisions of the foregoing section of the Code are interpreted as the minimum acceptable standards.

This Grand Jury recognizes that a strict interpretation of the Code can not be applied in all instances. For example, where the handicapped person has to cross a lane of traffic, the shortest **accessible** route may not be the safest route. Locating a parking place further from the entrance, but alongside the building may actually be the **shortest accessible route**. This is true if it is not carried to extremes by placing the parking place so far from the entrance that the distance from the entrance alone becomes a barrier to the handicapped person<sup>6</sup> thereby negating the intent of ADA and Title 24. If unreasonable hardship exists that makes compliance with the Code unreasonable, adjustments to the requirements of the Code may be necessary.<sup>7</sup>

It is the intent of the ADA and the Code with which this Grand Jury has concerned itself. To that purpose the Grand Jury randomly selected and investigated several locations where handicapped parking was required. These locations were selected on the basis that they be relatively new buildings; were for the most part stand-alone buildings; and served the general public. Due to time limitations only nine locations were chosen for investigation, although there was a plethora of other apparent violations.

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<sup>3</sup> California Building Code §1129B

<sup>4</sup> California Building Code §104.2.1

<sup>5</sup> California Building Code §219

<sup>6</sup> California Building Code §217, Path of Travel

<sup>7</sup> California Building Code §222, Unreasonable Hardship

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After selection of the locations, the approved plans for the selected buildings were obtained from the Developmental Services Department and reviewed to determine if the location of the handicapped parking places were in compliance with the Code, and in agreement with photographs taken by the Jury of existing conditions at the sites,

After examination and discussion of the approved plans by the Jury, the following issues were found:

1. At two comparable large home building supply stores in Mission Valley and Mira Mesa, all of the handicapped parking is clustered in a line directly across from one entrance to the store. However, this Grand Jury has determined that there are three entrances to these stores that are generally used by the public: the main entrance; the entrance to the garden supply area; and the entrance to the lumber and building supply area. With three entrances it appears that the handicapped parking should have been distributed among the entrances. Because of the clustered location of the handicapped parking, it was observed that the handicapped parking was seldom used at these locations. However, in the Cities of Santee and El Cajon where the parking spaces are distributed among the entrances, the handicapped parking spaces are almost always in use at similar stores.
2. At a large retail discount store in Mission Valley, the handicapped parking was lined up against the side of the building in keeping with the preference of avoiding having to cross a lane of traffic to reach an entrance. However, the handicapped parking was lined up on only one side of the building with the last space at a great distance from the entrance. Closer parking was available along the other side of the entrance, yet only two of these parking spots were used for handicapped parking,
3. At a large retail store at College Grove there is no handicapped parking at the entrance. The handicapped parking is two parking lanes away from the entrance, while the parking across from the entrance is used for regular parking. All parking at this location requires crossing a lane of traffic.
4. At another large discount store in College Grove, parking is lined up on the side of the store, again applying the preference for the handicapped not having to cross a lane of traffic, although there were regular parking places closer to the entrance. However, in this case it was determined that the last space was 279 feet from the entrance or nearly the length of a football field. At this inordinate distance, the distance itself becomes a barrier. The preference not to cross traffic lanes should have been overridden and some of the other parking spaces across from the entrance should have been used. It must be remembered the users of these parking spaces are handicapped. Most have been certified by their physician as having difficulty walking long distances.

5. At another location in Mission Valley, an office supply store has the handicapped parking placed as far from the entrance as is physically possible even though parking is available at the front entrance of the store. However, it was determined that the parking lot was recently repaved at which time the handicapped parking was required to be brought into conformance with the Code, but was not brought into conformance.

These foregoing apparent errors were found after only a cursory examination of the approved plans and were the motive for further investigation.

### **DEVELOPMENT SERVICES DEPARTMENT**

The management of the Development Services Department was interviewed and testimony was taken to obtain an overview of the procedure used in the approval of plans. From this testimony, it was determined that when an owner or developer submits plans to the Development Services Department for approval they are given to a Plan Checker who checks the plans for **compliance** with the Code. This includes checking for compliance with the handicapped parking regulations. After approval by the Development Services Department, the project is then built by the owner or developer and is inspected for compliance with the approved plans for conformity with the Code by building inspectors who issue a certificate of occupancy as final approval.

Development Services Department management was furnished with a list of the selected locations to provide members of the department with the locations in question so that when their testimony was taken the witnesses could more easily testify about the specific locations they were to be questioned about. This Grand Jury then ascertained which Plan Checker had approved the plans at each of the locations being investigated and which inspector gave final approval to the project.

Each Plan Checker was interviewed separately. The plans were reviewed to determine the appropriateness of the location of the handicapped parking places. The review consisted of determining whether the handicapped parking places were placed on the shortest route to the entrance; whether the locations were distributed among all entrances; and if not, on the shortest route to the entrance or evenly distributed. We also questioned whether there were extenuating circumstances or hardships that made it appropriate to place them farther away.

What the Grand Jury learned from this testimony was interesting. In no case were there any extenuating circumstances involved in the location of the parking spaces discussed. Everyone interviewed at the Development Services Department was familiar with the Code requirements regarding the location of handicapped parking spaces. Testimony revealed that in several cases they were approved for that location because the architect must have had a good reason for putting them there. In other cases the testimony was it slipped by me. In one case after the Plan Checker had required a change in the plans to correct the placement of the parking spaces, the architect then submitted a new set of plans with unrelated changes and put the parking places back where they had been

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originally. The Plan Checker missed the change. The general tenor, which was actually articulated, by some of the Plan Checkers was that the placement of handicapped parking places was not considered a matter of high priority. This attitude was also sensed in later interviews with Development Services Department management.

The Grand Jury then interviewed the Field Inspectors regarding the selected locations. The Jury heard the same explanations for the location of the handicapped parking as was heard from the Plan Checkers i.e. It's a low priority item and The architect must have had a good reason for putting them there. Only one of the Inspectors saw any problem with the location of the handicapped parking spaces.

When questioned further it was determined that the training of the Inspectors had not included specific information regarding the proper location of handicapped parking places. Although the low priority given to handicapped parking does not appear to be willful, it has led to neglect in approving construction.

In later interviews with the Development Services Department management admitted that training of both Plan Checkers and Inspectors needed more emphasis on priorities of handicapped parking and the location of handicapped parking.

### **NEIGHBORHOOD CODE COMPLIANCE DEPARTMENT**

The last line of defense provided by the City in enforcement of the Building Code is the Neighborhood Code Compliance Department.

The San Diego City Council has described the purpose of the Neighborhood Code Compliance Department to be an important public service, and vital to the protection of the public's health, safety and quality of life.<sup>8</sup> To carry out this purpose the City Council has given the department wide powers of enforcement.<sup>9</sup>

Management of Neighborhood Code Compliance was interviewed and testimony taken twice. Testimony was also taken from the Accessibility Specialist for the Department. At the first interview, the addresses of the locations were requested. These were provided to the Department to enable more responsive answers to our questions. The testimony of the Accessibility Specialist indicated a well-trained and knowledgeable person who was dedicated to the job.

At a few of the locations Neighborhood Code Compliance agreed that the handicapped parking was not in compliance with the Code. However, at the two building supply stores mentioned before, the solution of Neighborhood Code Compliance was to have the entrance sign removed from the building at the building materials entrance. Even with

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<sup>8</sup> San Diego Municipal Code §12.0101

<sup>9</sup> San Diego Municipal Code §12.0102 et.seq.

this questionable interpretation of the Code, this solution does not address why there is no handicapped parking at the entrance to the Garden Shop.

At another location, the office supply store in Mission Valley, it was determined by Code Compliance that the slope of the parking places in front of the door were in excess of 2 percent, thereby, according to the Code, making them unfit for use as handicapped parking spaces. It was also pointed out by Neighborhood Code Compliance that the parking lot was recently repaved. While the Grand Jury questions whether the existing slope is in excess of 2 percent, the mere fact that the parking lot was repaved creates a need for a new permit that should have required compliance with the Code provisions regarding handicapped parking spaces<sup>10</sup>. This did not concern Code Compliance; Code Compliance actually used the repaving as the reason that the parking spaces could not be placed at the entrance to the store, and that they were placed as far as physically possible from the entrance while remaining alongside the building.

At a third location, the large discount store at College Grove where some handicapped parking was located almost the length of a football field away from the entrance, Neighborhood Code Compliance could not understand why the distance was an issue. It appears that Neighborhood Code Compliance may not fully understand problems the handicapped have walking or wheeling a wheelchair great distances.

The managers of Code Compliance vehemently denied that the Department relies on the Development Services Department evaluations regarding the location of handicapped parking. Neighborhood Code Compliance claims they make an independent evaluation of the location of handicapped parking. The testimony of Neighborhood Code Compliance management has led this Grand Jury to believe otherwise.

## ***FACTS & FINDINGS***

### ***Facts***

Testimony of both the Plan Checkers and Inspectors revealed that the placement of handicapped parking was a low priority item.

Testimony revealed that in many of the examined locations both the Plan Checkers and Inspectors gave great weight to the location of the handicapped parking locations chosen by the architects/developers/owners without further inquiry.

Testimony revealed that the Neighborhood Code Compliance department would bend over backwards to find a handicapped parking place in compliance, including suggesting the removal of an entrance sign from an entrance commonly used by the public.

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<sup>10</sup> 28 CFR 36 §4.1.6

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### ***Findings***

This Grand Jury finds that the Development Services Department has been giving low priority to enforcement of codes regarding the location of accessible parking for the handicapped.

The procedures of both Plan Checkers and Inspectors need to be changed to provide them with the tools to do their job. This Jury further finds that training of Plan Checkers and Inspectors by the Development Services Department is inadequate.

This Jury further finds that the attitude of the Neighborhood Code Compliance Department management does not well serve the citizens in the City of San Diego.

Testimony suggested that management of Neighborhood Code Compliance is more interested in making excuses for the existing handicapped parking locations than in correcting them.

This Jury further finds that Neighborhood Code Compliance management needs indoctrination as to the purpose of the Department.

### ***RECOMMENDATIONS***

**The Grand Jury recommends that the San Diego City Council:**

- 04-10-1** Direct the City Manager to reevaluate priorities of the Development Services Department and to assure enforcement of the Code as it applies to the location of handicapped parking.
- 04-10-2** Direct the City Manager to require Development Services Department to provide additional training for both Plan checkers and Inspectors regarding the requirements of the ADA and Code as they apply to the location of handicapped parking.
- 04-10-3** Direct the City Manager to require the management of the Neighborhood Code Compliance Department to review the purpose of the department and to provide training regarding the location of handicapped parking, at the highest levels, of the Neighborhood Code Compliance Department.

### ***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933 (c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such



comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b),(c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspect of findings or recommendations affecting his or her agency or department.

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Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated:

<b><u>RESPONDING AGENCY</u></b>	<b><u>RECOMMENDATIONS</u></b>	<b><u>DATE</u></b>
<b>San Diego City Council</b>	<b>04-10-1 through 04-10-03</b>	<b>09/07/04</b>