



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Vice Mayor Chappie Jones,
Councilmember Sergio Jimenez,
Council Member Pam Foley

SUBJECT: ADA Compliance

DATE: November 24, 2021

Approved   Date *November 24, 2021*

RECOMMENDATION

Direct City Manager to ensure all businesses, specifically small, minority-owned businesses, are educated about the [American with Disabilities Act](#) (ADA) Compliance requirements at the state and federal level, and have access to resources and tools, to ensure the City of San José is barrier free, inclusive, and accessible to all residents and visitors through the following actions.

1. Provide and improve multi-language education through:
 - 1) A new City webpage that includes information about ADA compliance tools, resources, and access to local and state services to help business owners and non-resident landowners comply with ADA requirements.
 - 2) Mailers/flyers to be distributed to San José certified businesses in the zip codes listed in Attachment A, providing them education about the obligation to comply with state and federal ADA laws and access to resources and tools.
 - 3) City-sponsored webinar in partnership with ADA compliance subject expert(s) providing overview and education on state and federal laws, local and state resources for assistance in ensuring places of business are accessible, and protection against accessibility lawsuits.
2. Include distribution of work between Office of Economic Development and the Planning Division's Business Ally Program/Coaching Center to utilize existing resources and workplans such as:
 - a. OED's current efforts towards redesign of the Business Owner Space website and creation of a Virtual Business Center as a "one-stop-shop" in alignment with the [Mayor's Budget Message](#) in June 2021.

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- b. Planning Division's "Disability Access and Education Revolving Fund;" this is a state mandated program that has created a local revenue stream for training and certification of municipal CASp inspectors, and education, outreach, and grants to facilitate ADA compliance for small businesses.
3. Increase promotion of the City's [Disabled Access Improvement Grant Program](#), which was launched in 2020 to facilitate ADA compliance for small businesses; partner with third party organizations specialized in providing technical assistance and support for small businesses.
4. Report on appropriation of funds collected through the state mandated Disability Access Education Revolving Fund; expand use of funds to include the "Accessibility & Legal Guidance Fund Program" to provide financial assistance grants and guidance to qualifying small businesses with:
 - a. Correcting construction-related physical access violations per a completed [Certified Access Specialist](#) (CASp) inspection report, specifically to cover the top three violations reported statewide:
 - 1) Noncompliant existing parking spaces, e.g. excessive slopes/cross-slopes, improper dimensions, striping, etc.;
 - 2) Access heights within public facility, e.g. heights of surfaces such as counters, bars, or tables are not compliant;
 - 3) Noncompliant or nonexistent Parking for Van-accessible and/or loading zones;
 - b. Navigating through remediation of accessibility violations and litigation.
5. Ensure the City's "Al Fresco Forever" initiative includes education about ADA compliance requirements and guidelines on access solutions for businesses to implement in order to adequately serve customers with disabilities and prevent violations that may place businesses at risk for lawsuits.
6. When considering establishment of the new Office of Disability Affairs as part of the budget process, include a forum or point of contact for citizens to submit communication regarding access and barriers at public spaces and places of businesses within the City so that these issues may be potentially addressed proactively and outside of the litigation process.
7. Direct Office of Intergovernmental Relations to:
 - a. Work with City's State lobbyist and/or Assembly Members Alex Lee, Evan Low, Ash Kalra, and Senator Dave Cortese to:

- i. Advocate for maintaining the state mandated “Disability Access and Education Revolving Fund” fee at \$4 and retention of the fees collected at 90% for local municipalities before it reverts to a \$1 fee and 70% retainment in 2023. This will allow the City to continue with providing funding for training of CASp inspectors, the City’s [Disabled Access Improvement Grant Program](#), and other potential programs as proposed at the local level that may serve as tools for small businesses to utilize and ensure accessibility for individuals with disabilities; and
 - ii. Request allocation in the state budget to establish grants for small businesses in order to upgrade their premises to be administered through the California Commission on Disability Access (CCDA); in addition to working with members representing the Bay Area, consider also working with members representing the Central Valley, which historically has also been hard hit by these lawsuits.
- b. Advocate for federal legislative reforms that make it more difficult to file predatory ADA lawsuits in federal court, especially considering the 45% increase in the number of ADA lawsuits against small businesses in California through the federal courts since 2017.¹
8. Collaborate with the State’s California Commission on Disability Access (CCDA) and Disability Rights California to explore best practices in other cities throughout the State, increase education, and promote available state resources and tools to ensure businesses are accessible by individuals with disabilities.
9. Report Back to Council with an Information Memorandum on Recommendations 1 – 6, and 8; report back to Council on Recommendation 7 at the next IGR Quarterly Report.

DISCUSSION:

According to the [California Commission on Disability Access 2020 Annual Report](#), the City of San José has the highest number of reported alleged disability access violations across the State. The CCDA received a total of 3,621 ADA Title III state and federal complaints. Two-hundred and-thirty-seven of those complaints are in San José neighborhoods, according to ranked zip codes, and include Almaden Valley, Alviso, Evergreen, Mayfair, Naglee Park, and Willow Glen. Twenty seven percent of them are in the zip code 95112 in District 3 and the remaining are occurring throughout the City, primarily in Districts 2, 7, 9, 5, and specifically in zip codes 95123, 95111, 95124, and 95116. According to the data provided in Attachment A - 2020 San

¹ California Commission on Disability Access, 2020 Annual Report, November 12, 2021, <https://www.dgs.ca.gov/CCDA/News/Page-Content/California-Commission-on-Disability-Access-News-List-Folder/CCDA-2020-Annual-Report-is-now-available>.

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Jose Top Zip Codes for Alleged ADA Violations, provided by the CCDA - not one district in San Jose is untouched. This shocking report and finding calls for urgent action by our City to mitigate the devastating impact this has had on our small businesses, often leading to their closure, to ensure that we create an inclusive, barrier free, and accessible space for all of our residents and visitors, and to create an environment where our businesses can prosper.

We propose a multi-pronged strategy that includes:

- increasing education about ADA state and federal requirements;
- increasing outreach and promotion to small businesses about local and state resources and tools available;
- a new grant program that could potentially cover construction-related ADA violation corrections and navigation through accessibility violation remediation and lawsuits; and
- advocacy.

At the Small Business Advisory Task Force Meeting of October 14, 2021, we heard from a number of stakeholders, including small business owners, State Assembly Members Alex Lee and Evan Low, and disability advocates, regarding the impact that ADA Compliance litigation has had on our small businesses, as well as the impact of not having equal access to public facilities has had on our community members with disabilities. A summary of legislation and litigation to enforce ADA laws was provided for the Task Force's review and consideration (Attachment B). In an ADA "drive-by" lawsuit, plaintiffs will file lawsuits against businesses who are not ADA compliant, typically amounting between \$75,000- \$120,000. Often the cases get settled for anywhere between \$4,000- \$20,000. As shared by Assembly Judiciary Committee Chief Counsel Alison Merilees, small and local businesses are the main targets of these type of lawsuits, particularly minority-owned businesses that do not have much capital, access to resources, or knowledge regarding how to correct the violations. Additionally, many of these businesses are in non-English speaking neighborhoods. For the Bay Area, there are two firms/plaintiffs that are filing a majority of ADA lawsuits against small businesses. The articles about the recent trend of ADA lawsuits being filed mention that California's Unruh Act provides a civil fine of \$4,000 per violation. But federal rules provide that such statutory damages are not recoverable if and when the underlying ADA violation is corrected. So, if a violation was corrected, the business would not be responsible for the penalty. Unfortunately, small businesses are not aware of their rights; they don't know that if they hire a private CASp inspector to issue a report that outlines the structural violations that need to be corrected and a feasible schedule of completion plan, this step alone provides protection. It provides a grace period of 120 days, in which a business cannot be sued for minimum statutory damages, and they can make the required corrections to be ADA compliant.

Also important to note, State law requires the owner/lessor to disclose whether or not a CASp inspection was completed and in the event it was completed, to include the results. However, current State law does not require the owner/lessor to conduct a CASp or correct violations if

they exist. In fact, it is common for the lessor to include language in the lease agreement that places the burden of correcting accessibility violations on the business owner leasing the space. At the same time, small businesses should know that they are not responsible for all accessibility repairs. A landlord is generally responsible for common areas outside a business (maintenance of parking lots, including outdoor signage, ramps to front doors, etc.). It is important for small business owners to understand their responsibilities and be aware of the potential risk or negotiating opportunities when they sign lease agreements.

Last, ADA compliance is not only required in our structural environment, but it is also required in web content and mobile phone applications. According to the CCDA, there were 21 website violations in 2020, known as non-construction-related physical violations. These violations included concerns regarding alleged issues of large print, sign language interpreters, access to screen readers, screen caption options, and reasonable accommodation policies (including those for service and therapy animals). Hotels are the targets of these type of litigations and are known as “click-by” lawsuits².

Education & Outreach

Small businesses in San José should be educated about the law, their rights, and their responsibility to correct ADA violations. Unfortunately, many are often unaware of state and federal ADA compliance requirements and existing nuances. And if they are aware, they are unsure of what compliance looks like. The proposed Education & Outreach effort seeks to raise awareness of access issues and the availability of tools to support accessibility improvements. In addition to providing education to businesses through the proposed webpage and webinar, it is important that this effort is targeted to the business areas that have been most impacted through distribution of multi-language flyers/mailers.

City’s Disabled Access Improvement Grant Program

San Jose’s “Disabled Access Improvement Grant Program,” also known as the CASp grant program, is overseen in the Department of Planning, Building, and Code Enforcement through their Business Ally/Business Coaching Center. It provides up to \$8,000 credit grants to help qualifying small businesses achieve compliance with accessibility requirements under the ADA and the California Building Code. This program is made possible through the state mandated Disability Access and Education Revolving Fund. A total of \$40,000 was appropriated for the grant program in FY 2020-21; however, since its launch in February 2020, only one applicant applied and was awarded the grant. Due to focus on surviving the pandemic, it is common knowledge that our small businesses have been consumed with keeping their business afloat and are now shifting to recovery mode. However, given the high number of ADA violations reported in our City, it is evident that we can do better, not only in providing education, but by increasing promotion of this program through partnerships with third party organizations that work closely with small businesses in providing technical assistance and support. It may also be beneficial to

² CBS 5 KPIX San Francisco, April 30, 2021, <https://sanfrancisco.cbslocal.com/2021/08/30/update-ada-plaintiffs-filing-multiple-lawsuits-targeting-hotel-websites/>.

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evaluate best practices from other cities that have similar programs, such as San Francisco, San Diego, and Fresno. Completing CASp inspections are a key step to correcting violations and creating a barrier free City. There may be more optimal strategies that could provide incentives for businesses to make the corrections outside of the litigation process, or more resources may need to be directed to providing guidance on completing a CASp inspection and proceeding beyond completion of the CASp inspection.

Proposed Accessibility & Legal Guidance Fund Program

To further assist our small businesses in complying with ADA requirements and staying in businesses, the proposed Accessibility & Legal Guidance Fund Program is designed to provide incentive for qualifying small businesses to comply with ADA laws as an effort to create an accessible and barrier free environment for all of our citizens. It will provide the guidance business owners are missing on how to navigate through an ADA lawsuit, potentially create an accessible development plan, and financial grants to help cover the costs of correcting accessibility violations. Based on the number of ADA violations occurring in San Jose, with several of them resulting in business closures or relocations, it is evident that complying with ADA laws can place an enormous financial burden on small businesses, especially as they are recovering from the impacts of COVID-19 and the pandemic. This program is meant to alleviate that burden utilizing the funds collected and available through the state mandated Disability Access and Education Revolving Fund.

Specific structural violations that are prevalent statewide would be eligible for coverage under the current proposal. Staff is encouraged to evaluate this proposal and come back with additional suggestions and recommendations for the total grant awards per applicant.

Advocacy

We commend the Office of Intergovernmental Relations for adding ADA Compliance as a priority within its 2022 Legislative Program and urge advocacy at both the state and federal level of governments. We recommend establishing a state grant program, and to maintain the fees currently collected through the state mandated program in accordance with SB 1186 and AB 1379. The current fee and collection rate is scheduled to revert to a significantly lower level of funding in 2023. The current level of funding has made it possible for our City to implement the CASp Grant Program. In addition, it is important to note that recent state law reforms added new procedural requirements for ADA lawsuit filings in California state courts. These requirements help small businesses avoid litigation and minimize their exposure to liability. But plaintiffs can avoid these requirements by filing their claims in federal court. This has led to a corresponding increase in ADA federal court filings within California. State law cannot impose new federal court ADA filing requirements. IGR should therefore advocate for federal legislative reforms to help align ADA lawsuit filing requirements in state and federal courts.

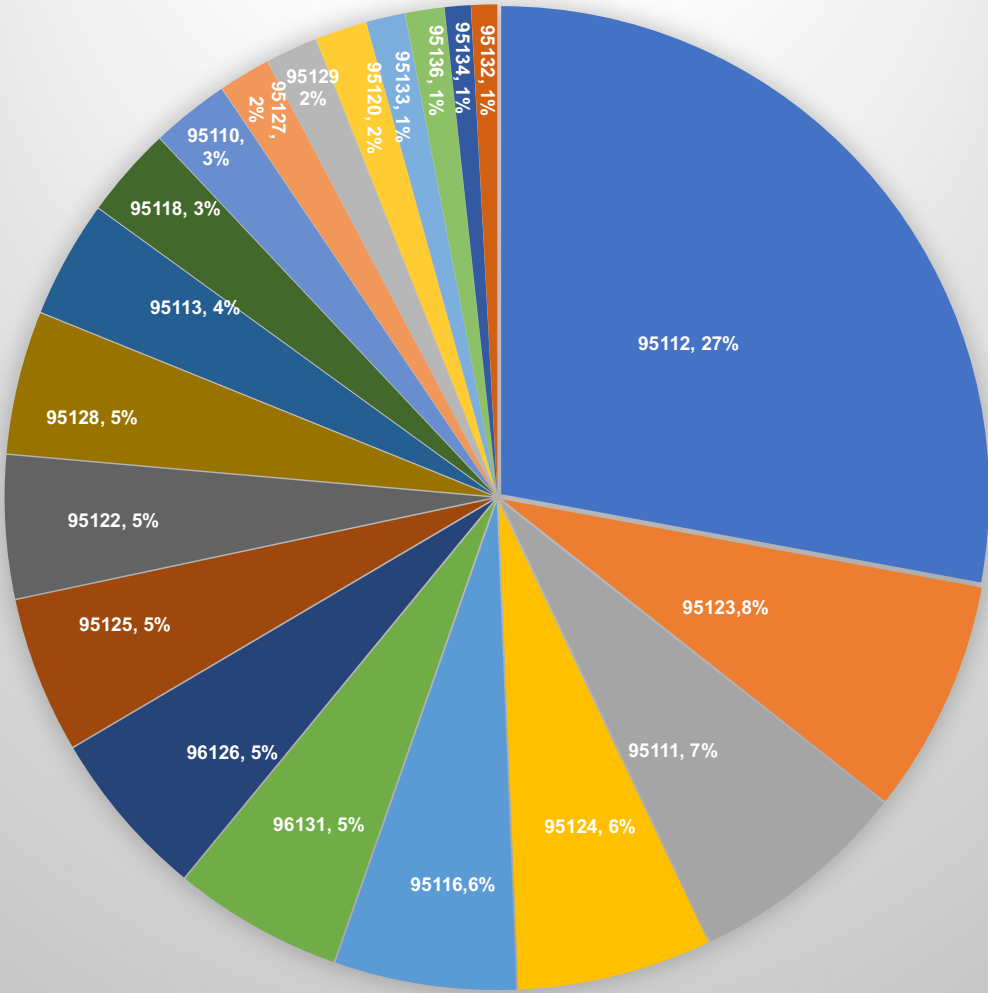
The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.

2020 San Jose Top Zip Codes for Alleged ADA Violations Research From CCDA

ZIP Code of Defendant Records	ZIP Code of Defendant_Total Instances	ZIP Code of Defendant Percentages
95112	65	27%
95123	18	8%
95111	17	7%
95124	15	6%
95116	14	6%
95131	13	5%
95126	13	5%
95125	12	5%
95122	11	5%
95128	11	5%
95113	9	4%
95118	7	3%
95110	6	3%
95127	4	2%
95129	4	2%
95120	4	2%
95133	3	1%
95136	3	1%
95134	2	1%
95132	2	1%
95002	1	0%
95121	1	0%
95148	1	0%
95117	1	0%
93130	1	0%

Notes: The California Commission on Disability Access (CCDA) identified approximately 237 federal and state filings for alleged ADA Title III violations from 25 San Jose ZIP Codes in their database portal. The top ten ZIP codes included 95112, 95123, 95111, 95124, 95116, 95131, and 95126. Four ZIP codes yielded only one instance and were therefore, not represented in the pie chart. The largest percentage of 27% or 65 total instances came from the 95112 San Jose ZIP code.

2020 San Jose Zip Codes for Alleged ADA Violations



The Americans with Disabilities Act (ADA) requires all businesses open to the public to be accessible to all. President George H.W. Bush signed the ADA on July 26, 1990, more than thirty years ago. Pursuant to the ADA, no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of *any place of public accommodation* by any person who owns, leases, or leases to, or operates a place of public accommodation. (42 U.S.C. Section 12182.)

The Unruh Civil Rights Act, in California state law, predates the ADA by more than three decades. It was passed in 1959 and provides that all persons, regardless of sex, race, color, religion, ancestry, national origin, disability or medical condition, are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. The Unruh Act specifically states that a violation of the ADA is a violation of Unruh. A violation of the Unruh Act subjects a person to actual damages incurred by an injured party, treble actual damages but not less than \$4,000, and any attorney's fees as the court may determine to be proper. (Civil Code Section 51 *et seq.*)

Prior legislation (revising state law). Many bills seeking to address issues of liability for construction-related accessibility violations have been considered by the Legislature in the past 15 – 20 years. Here are descriptions of several of the most significant ones:

In 2003, **Senate Bill 262** (Kuehl), Chapter 872, Statutes of 2003, created the CASp program to meet the public's need for experienced, trained, and tested individuals who can inspect buildings and sites for compliance with applicable state and federal construction-related accessibility standards.

Five years later, **Senate Bill 1608** (Corbett), Chapter 549, Statutes of 2008, among other things, provided for an early evaluation conference regarding a filed complaint if the defendant is a qualified defendant who had the identified place of public accommodation inspected and determined to meet applicable physical access standards by a CASp prior to the filing of the complaint.

Four years after that, the Legislature approved **Senate Bill 1186** (Steinberg, Chapter 383, Statutes of 2012) gave defendants that are small businesses the right to an early settlement conference and reduced civil penalties. It also required a one-dollar additional fee to be paid by any applicant for a *local business license*, permit or similar instrument when it is issued or renewed. The fee applies to applications and renewals filed between January 1, 2013 and December 31, 2018 and it is collected by the issuing jurisdiction (city, county, or city and county). The purpose of the fee is to increase disability access and compliance with construction-related accessibility requirements. Additionally, the fee assists local jurisdictions in supporting the CASp program and provides the State Architect with funds to maintain oversight of the CASp program.

SB 269 (Roth and Vidak), Chap. 13, Stats. 2016, made a number of significant changes to existing law in order to provide financial relief to small businesses and encourage compliance with construction-related accessibility standards. Specifically, it established that certain "technical violations" are *presumed* not to cause a person difficulty, discomfort or embarrassment for the purpose of an award of minimum statutory damages in a construction-related accessibility claim, subject to rebuttal, and avoid liability if the "technical violations" are corrected within 15 days. "Technical violations" are defined as the following deficiencies (many of which can be noted in "drive-by" inspections of the premises by persons who are not actual patrons of the establishment):

- (A) Interior signs, other than directional signs or signs that identify the location of accessible elements, facilities, or features, when not all such elements, facilities, or features are accessible.
- (B) The lack of exterior signs, other than parking signs and directional signs, including signs that indicate the location of accessible pathways or entrance and exit doors when not all pathways, entrance and exit doors are accessible.
- (C) The order in which parking signs are placed or the exact location or wording of parking signs, provided that the parking signs are clearly visible and indicate the location of accessible parking and van-accessible parking.
- (D) The color of parking signs, provided that the color of the background contrasts with the color of the information on the sign.
- (E) The color of parking lot striping, provided that it exists and provides sufficient contrast with the surface upon which it is applied to be reasonably visible.
- (F) Faded, chipped, damaged, or deteriorated paint in otherwise fully compliant parking spaces and passenger access aisles in parking lots, provided that it indicates the required dimensions of a parking space or access aisle in a manner that is reasonably visible.
- (G) The presence or condition of detectable warning surfaces on ramps, except where the ramp is part of a pedestrian path of travel that intersects with a vehicular lane or other hazardous area. Civil Code Section 55.56 (e)(1).)

The bill also provides a 120-day period in which a business cannot be sued for minimum statutory damages after obtaining a CASp inspection. (Civil Code Section 55.56 (g)(3).)

AB 1521 (Assembly Judiciary Committee, Chap. 755, Stats. 2015), in an effort to curtail the small percentage of ADA claims filed in bad faith and motivated to obtain quick settlements from unsophisticated small business owners who are unaware of their

legal rights and responsibilities under the ADA, this bill provided additional resources and information to small business owners. The bill also limited the practice of high-volume lawsuits that are motivated by quick settlement with business owners, rather than correction of construction-related accessibility violations, by imposing a higher filing fee and additional pleading requirements on a person who meets the definition of a “high-frequency litigant.” Status: Chapter 755, Stats. 2015.

AB 2093 (Steinorth) Disability access. This bill increased information about the Americans with Disabilities Act and a commercial property's compliance with construction-related accessibility standards that is available to prospective tenants of commercial property. It also created a presumption that the responsibility for making any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in a CASp report (prior to lease of the property) is the responsibility of the commercial property owner or lessor, unless otherwise mutually agreed upon by the commercial property owner or lessor and the lessee or tenant. Status: Chapter 379, Stats. 2016.

AB 1379 (Thurmond) CASp funding. This bill increased funding for the state Certified Access Specialist Program (CASp) program in order to increase the availability of CASp services and ultimately improve compliance with state and federal construction-related accessibility standards. The bill, among other things, required, on and after January 1, 2018, through December 31, 2023, any applicant for a local business license or equivalent instrument or permit, and any applicant for the renewal of a business license or equivalent instrument or permit, to pay an additional fee of \$4 for that license, instrument, or permit, in order to fund CASp services by the city, county, or city and county that issued the license, instrument, or permit. Status: Chap. 667, Stats. 2017.

AB 3002 (Grayson) Disability access: information to applicants for building permits and business licenses. This bill promoted disability access at commercial businesses and places of public accommodation by requiring local government agencies to provide building permit applicants with an advisory about federal and state disability access laws, encouragement to obtain an inspection from a Certified Access Specialist (CASp), information about how to contact a CASp, and notice regarding the availability of state and federal programs to assist small businesses with disability access expenditures. Status: Chap. 680, Stats. 2018.

Unintended consequences of recent business-friendly revisions to state law. Recent reforms to state law like those described above were enacted to help small businesses avoid litigation and minimize their exposure to liability. They also coincide with a dramatic *decline* in the number of construction-related accessibility claims that are being filed in *state court* and a corresponding *increase* in claims being filed in *federal court*. This probably is because plaintiffs do not have to comply with the small business-friendly procedural limits and requirements that have been enacted in California when they file their claims in federal court. The California Legislature may

have inadvertently driven lawsuits into federal court. Any bill to place new procedural obstacles for filing civil lawsuits in California would likely accelerate and exacerbate that trend, without necessarily reducing the total number of lawsuits filed against California businesses for disability access violations.

Why “right to cure” is not the answer. While the Legislature has passed the above reforms to target the problem of high-frequency litigants and relatively minor “technical” construction-related access violations, it has repeatedly rejected a universal “right to cure” all violations. First, businesses would have no incentive to bring their premises into compliance with the law if they could just wait until they were served with notice of a violation. In the meantime, disabled members of the public could be denied access to public facilities. Second, it would be not be effective. It would not change the fact that businesses are obligated to comply with—and subject to liability for violation of -- *federal law* (i.e. the ADA itself). Third, it won’t affect the current trend of these cases being filed in *federal court* (where the right to cure would not apply). The only way for businesses to truly protect themselves and stop these cases from being filed is to bring their businesses into compliance with ADA and state accessibility standards.

Small number of high frequency/vexatious litigants in the Bay Area. The recent spate of ADA cases that are being filed in the Bay Area have all, according to press coverage, been filed by one or two plaintiffs/law firms. Many of them have been filed by attorney Scott Johnson (see [The Man Who Filed More Than 180 Disability Lawsuits - The New York Times \(nytimes.com\)](#) and [CA serial ADA filer keeps filing lawsuits despite indictment | The Sacramento Bee \(sacbee.com\)](#)). Also: [Spate of ADA lawsuits hits hundreds of local businesses still reeling from pandemic | News | Palo Alto Online](#) and [ADA lawsuits hit hard in San Mateo County | Local News | smdailyjournal.com](#)). Johnson has filed all of his lawsuits in **federal court**, specifically in the Northern District of California (covering the Bay Area and coastal communities from central California up to the Oregon border). He’s probably done that for several reasons. First, he is under indictment (in the Eastern district of California, where he lives) for tax fraud. (<https://www.mercurynews.com/2021/06/28/serial-ada-filer-sets-sights-on-bay-area-merchants-submitting-1000-complaints-in-two-years/> Also -- <https://www.sacbee.com/news/local/crime/article230745859.html>) Second, all of the procedural protections that apply to claims filed in state court, such as the ones described above (the right to correct technical violations, immunity for being sued for 120 days after a CASp inspection, enhanced notice requirements, and simple answer forms, etc.) do not apply in federal court. Finally, the CCDA points out in its 2020 annual report to the Legislature that claims in federal court are resolved (mostly via settlement) much more quickly in federal court than in state court.

A couple of the articles about the recent trend of ADA lawsuits being filed in the Bay Area, above, mention the fact that California’s Unruh Act provides a civil fine of \$4,000 per violation. But federal rules provide that such statutory damages are not recoverable if and when the underlying ADA violation is corrected. So the civil penalty under the Unruh Act is a red herring; if a violation were corrected, the business would not be responsible for the penalty. But as a couple of the articles point out, small businesses don’t know their rights and they don’t take

these cases to trial. They settle in most cases because they are scared and just want the case to go away. The irony is that they will continue to be a target for both legitimate and shady ADA lawsuits as long as they leave ADA violations uncorrected. (See this article which also discusses Scott Johnson's loss at trial -- <https://www.recordnet.com/article/20160601/news/160609952>). As of November 23, 2021, the website of the California State Bar indicates that Scott Norris Johnson of Carmichael is an attorney in good standing without any pending disciplinary matters pending.

The other attorney who is apparently fueling this trend is Tanya Moore. She has also been the subject of misconduct allegations. One business that she sued turned around and countersued her for racketeering. Her tactics landed her in hot water with at least one federal district court judge. [Judge finds witness tampering in ADA lawsuit | News | Almanac Online | \(almanacnews.com\)](#). Also, the underlying case was ultimately settled, likely not on favorable terms to Moore's firm, given the other findings in the case. [RICO suit against disability law firm settled | News | Mountain View Online | \(mv-voice.com\)](#). It's hard to believe that complaints were not filed about Moore with the State Bar, but the Bar's website does not indicate that she has been disciplined.
<https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch?FreeText=tanya%20moore>

Changes to state law won't affect the ability of these attorneys to file lawsuits in federal court. As mentioned above, no change that could be made in **state law** is going to affect whether Scott Johnson or Tanya Moore—assuming their Bar licenses are not suspended or revoked--continue to file these types of cases in **federal court**. The attorneys are likely avoiding state courts because California has enacted laws that hurt their business practices. Even if existing state law were *repealed* (which would never happen because it is the state's primary civil rights law), small businesses would still be required to comply with (and face liability for violating) the federal ADA and could still be sued in federal court if their businesses were out of compliance with the ADA.

Other alternatives. The good news is that there are a couple of other things that could be done to help small businesses in the Bay Area. An attorney who is filing lawsuits that are truly unfounded could be declared a "vexatious litigant" in federal court, requiring them to get court permission before filing another lawsuit. The defendant business would have to show, in addition to evidence of the large number of cases filed, evidence of their deception or similarly outrageous litigation practices. <https://www.neildymott.com/new-weapon-has-emerged-defending-lawsuits-under-americans-disabilities-act>

Second, small businesses in the Bay Area should be educated about the law and their responsibility to correct ADA violations. In our experience, the most effective way for California businesses to avoid being sued is to bring their properties into compliance with state and federal disability access standards. The CASp program inspects businesses to help avoid lawsuits before they are filed. State law, as explained above, even provides immunity from liability (under state

law) during the CASp inspection and repair process. The program also provides signage, which can deter lawsuits.

Third, small businesses should know that they are not responsible for all accessibility repairs. A landlord is generally responsible for common areas outside a business (maintenance of parking lots, including outdoor signage, ramps to front doors, etc.).

Fourth, serious access violations must be corrected. As discussed in the article about Crema coffee shop in San Jose, there were obvious, serious, and long-standing access violations at the coffee shop. Businesses must have basic access features such as ramps.

Fifth, funding could be allocated in the state budget for grants to very small businesses in order to upgrade their premises. These grants could be administered through the California Commission on Disability Access (CCDA). a request for state funding in the budget could be made in conjunction with members representing the Bay Area and Central Valley, which historically has been hard hit by these lawsuits.

Sixth, there are resources available to help educate small businesses about their legal rights and responsibilities in this area of the law. The website of the California Commission on Disability Access (CDAA) has a lot of information that may be helpful to small businesses, including about the CASp program. [Disability Access Compliance Resources \(ca.gov\)](#) [Business Connect \(ca.gov\)](#) The CCDA can also help you plan and hold district educational events for small businesses.

For more information/questions:

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