



Memorandum

TO: RULES AND OPEN GOVERNMENT
COMMITTEE

FROM: Councilmember Peralez
Councilmember Davis
Councilmember Esparza

SUBJECT: SEE BELOW

DATE: November 18, 2021

Approved:

Date: 11/18/2021

SUBJECT: ADA Compliance for Small Businesses

RECOMMEDATIONS

Direct the City Manager to:

1. Return to Council with a Certified Access Specialist (CASP) Inspection Grant program offering up to \$1,000 grants to assist small businesses seeking to reach ADA compliance by first initiating a CASp inspection by a CASp.
2. Develop an outreach and educational campaign targeting small businesses focusing on business areas such as Little Saigon, La Placita, The Alameda, Lincoln Avenue, Downtown Core, Japantown, East Santa Clara Street, Calle Willow and 13th Street Business Corridor.
 - a. As part of the outreach and educational campaign, direct Staff to develop a multilingual ADA Compliance for Small Businesses brochure including information such as the importance of ADA compliance, penalties for ADA non-compliance, financial resources available for small businesses to become compliant, and the benefits of hiring a CASp Inspector.
3. Return to Council with an informational memo on current State and Federal bills seeking to update legislation related to ADA compliance.

BACKGROUND

While much of the governance related to Americans with Disabilities Act (ADA) compliance is at State and Federal level, this proposal is intended to increase accessibility within our small business community by promoting ADA Compliance, while offering assistance to small businesses seeking compliance.

Our small business community has experienced unprecedented challenges due to the COVID-19 pandemic and the ensuing economic devastation. When the initial shelter in place order was announced, businesses quickly pivoted their operations in an attempt to offer similar services while complying with COVID-19 mandates. In addition to pivoting operations, our small business community looked to grants and other assistance to keep their doors open and our residents employed.

While seeking any available lifeline to keep their businesses operational, our small, often minority-owned business community has continuously faced an additional challenge forcing some to bankruptcy: lawsuits related to ADA Compliance filed by serial plaintiffs.

In 2020, California saw a 21% increase in ADA filings¹ and five law firms are responsible for approximately 80% of all ADA lawsuits filed against small businesses in California². Also, businesses in non-English speaking neighborhoods are more likely to be targeted, as well as mom-and-pop businesses³.

We also understand the COVID-19 pandemic has disproportionally impacted residents with disabilities. Whether it is disruptions to normal healthcare service, increased isolation, challenges related to the everchanging operations of businesses, or the many other negative impacts brought on by the pandemic, our residents with disabilities must be included in our recovery process.

As such, we, as a City, have committed in our community and economic recovery process to not just return to a new normal, but to build back to a better normal. To achieve this better normal, we must ensure an equitable recovery process that serves those hardest hit by the pandemic.

ANALYSIS

City of San Jose's Current CASp Accessibly Compliance Grant Program

The City of San Jose's current [CASp Accessibly Compliance Grant Program](#), which was launched in February 2020 just before COVID-19 with an allocation of up to \$40,000, offers grants to qualifying existing small businesses and non-residential owners to hire a Certified Access Specialist (CASp) and for City permit and inspection fees related to corrective accessibility improvements. This program offers up to an \$8,000 grant upon building permit issuance, but requires the small business incur costs first without guaranteeing a grant.

Understanding many of our small businesses have depleted their reserves due to COVID to stay operational, requiring small businesses to incur additional expenses as a first step to ensuring compliance presents a barrier for many small businesses. Structurally changing a CASp Inspection Grant Program to allow for grants to be issued to small businesses, then verifying the completion of the CASp inspection, will remove barriers for small businesses who are seeking ADA compliance, thus further promoting accessibility in San Jose.

¹ <https://sanfrancisco.cbslocal.com/2021/08/02/serial-plaintiff-turns-california-ada-lawsuits-into-lucrative-cottage-industry/>

² <https://sanjosespotlight.com/fed-up-with-serial-ada-lawsuits-san-jose-business-owners-seek-legislative-help/>

³ <https://sanjosespotlight.com/fed-up-with-serial-ada-lawsuits-san-jose-business-owners-seek-legislative-help/>

Benefits of a CASp Inspection

A CASp is a professional who has been certified by the State of California to have specialized knowledge of the applicability of state and federal accessibility standards. A CASp will know which standards apply to a property based on the age of the facility and its history of improvements.

By getting CASp inspected, small businesses would understand where there are ADA compliance issues and allow the small business to plan for compliance improvements within their facility. Following a plan to achieve accessibility compliance demonstrates a small business' intent and commitment to following the law.

Also, by getting CASp inspected and regardless of the results, small businesses would be granted "Qualified Defendant" status. As a Qualified Defendant, small businesses would be granted certain legal rights for lawsuits related to accessibility including:

- Receiving a 90-day stay of court proceedings;
- Reducing minimum statutory damages to \$1,000 from \$4,000, if the small business is found in violation of a construction-related accessibility requirement and correct the violation within 60 days;
- A right to a Mandatory Early Evaluation Conference (EEC);
- The plaintiff must provide basis of claimed violation as cost prior to EEC.

Also, by displaying a certificate of inspection, it will discourage serial attorneys from identifying a property as an "easy target".

With the goal of increasing accessibility within the small business community, assisting small businesses to receive a CASp inspection is often the first step to ADA compliance, while providing small businesses legal rights granted as a Qualified Defendant.

This program should be in addition to the existing CASp Accessibility Compliance Grant Program, however, the existing program should transition to focus on assistance for City permit and inspection fees related to corrective accessibility improvements.

ADA Compliance Outreach and Educational Campaign

Accessibility is good for business, and many business owners embrace accessibility to improve the quality of life for our residents with disabilities as well as make their business more inclusive to all potential customers. Furthermore, there is a severe lack of informational resources available for small businesses to quickly understand ADA compliance, the potential penalties, and what resources are available to assist them in becoming compliant.

With this understanding, ADA compliance issues often stem from a lack of knowledge related to ADA compliance and lack of capital to make the required improvements. Developing an outreach and educational campaign will promote ADA compliance within our small business community and provide small business owners the necessary information to understand the issues and take corrective action.

Pairing this outreach and educational campaign with a single, comprehensive ADA Compliance for Small Businesses brochure will allow this information to be widely accessed and distributed.

An outreach and educational campaign for small businesses, as well as informational tools, should be included in the City Manager's evaluation of the roles and responsibilities of the ADA Coordinator position as already part of the workplan.

Inter-Governmental Relations Report

Accessibility requirements and the process for ADA lawsuits fall under the jurisdiction of the State and Federal government, and the City of San Jose has no authority to make changes. As such, small business advocates are looking to State and Federal legislations for relief while safeguarding the genuine intent of ADA. Understanding what current State and Federal bills are seeking to update legislation related to ADA compliance will help the City determine if there are bills we, as a City, can support.

CONCLUSION

The COVID-19 pandemic and ensuing economic devastation has brought forth unprecedented challenges for our most vulnerable residents and small businesses. As we continue our community and economic recovery process, we are charged with building back a better normal by ensuring an equitable recovery process.

Understanding our residents with disabilities and our small business community have been severely impacted by the COVID-19 pandemic, we have the opportunity to address a current crisis by improving ADA compliance within our small business community and furthering ADA compliance. This approach provides immediate relief for our small business community, while promoting an accessible San Jose for all.

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.