

**To: Commission**  
**From: Staff**  
**Re: Handicapped parking**  
**Date: October 30, 2009**

## MEMORANDUM

### Introduction

#### **A. *Project summary.***

This project began in earlier this year when Staff was contacted by a concerned citizen who explained that there was a need to revise the language of the statute pertaining to handicapped parking in New Jersey. The citizen explained that the New Jersey law regarding handicapped parking contains a “loophole” because it requires only that a handicapped person be in the vehicle, but does not require that person to enter or exit the vehicle while it is parked in the handicapped parking space.

Draft language requiring that the handicapped person enter or exit the vehicle while it is parked in a handicapped space was provided to the Commission for consideration. Legal Services of New Jersey objected to the draft language. The concerned citizen who initially proposed the modification disagreed with the bases for Legal Services’ objections.

In an effort to obtain additional comment on this matter, input was sought from the: New Jersey’s Division of Disability Services (“DDS”); individual in the Office of Disabilities Management, Department of Treasury, who is the statewide ADA Coordinator for the State of New Jersey; the New Jersey Division on Civil Rights (“DCR”); and the New Jersey Police Traffic Officers Association (“NJPTOA”).

New Jersey’s Division of Disability Services (“DDS”) supports the language proposed by the Commission. The State ADA Coordinator has taken a neutral position, indicating that he neither supports nor rejects the proposed modification to the statute. DCR was unable to provide comments in advance of the October meeting. An informal inquiry of the attendees at the October NJPTOA meeting revealed some support for the rationale underlying the project, but the officers raised concerns about the potential for civil rights violations or violations of the ADA or LAD as well as problems associated with attempts to enforce the revised statute.

#### **B. *Detailed comments.***

The need for a modification to the language of the statute was explained as follows in the correspondence received by Staff,

[i]n many other US states, as well as in other countries (i.e., Canada, England, Australia), the laws for use of a disabled parking space REQUIRE the disabled person to EXIT the vehicle once parked in that spot, not just be IN the vehicle, as New Jersey law requires. By only requiring that the disabled person be in the vehicle (not exit/enter the vehicle) New Jersey law, in essence, allows - ALLOWS - the disabled person, to whom the

parking placard is issued, to sit in the car and eat, sleep, play games, etc., or wait while their able bodied passenger does the running and benefits from the nice close parking spot. This is a huge loophole in New Jersey's law that makes the law deficient in its purpose to protect the spirit and intent of the reserved parking space.

States that require the handicapped individual to enter and exit the vehicle, clarifying that the holder of the special permit may not remain in the vehicle while another person who is not disabled or mobility impaired runs an errand, include: Alaska, Colorado, Florida, Illinois, Minnesota, Montana, Nebraska, and Wisconsin. The personal example that was provided to illustrate the problem in New Jersey is "Manasquan Inlet, in Point Pleasant, New Jersey."

On one side is a sea wall where many fishermen/ women go to sit and fish. The parking on this side of the inlet is just above/behind the wall...with two handicapped spaces facing the inlet and two handicapped spots not facing the inlet. Any nice day in the summer, you will ALWAYS find those handicapped spaces filled by occupied cars - people who have the parking placard hanging from the rear view mirror, but who just sit there to take in the views, watch the boats go in and out, etc...and I am deprived of using the space for what it is intended to be used for...

Legal Services of New Jersey, however, opposed "any penalty on persons holding disabled plates of placards for standing in designated disabled parking spaces", explaining that "[d]isabled placard holders typically exit their vehicles upon reaching their destinations" but that there are legitimate reasons why they "sometimes need to park in designated disabled spaces without leaving their vehicles". *March 17, 2009, Letter from Legal Services of New Jersey, page 1.*

The reasons why an individual might need to remain in the vehicle were said to include the: (1) "need to quickly find accessible parking" in the event of sudden pain or shortness of breath, which would enable the disabled driver to "avoid the undue stress of locating an available space" and "afford the driver with an additional level of safety and the ability to readily enter the building if the need should suddenly arise" in light of "[p]edestrian traffic patterns in parking lots" and "proximity to building entrances"; (2) "need to scout accessibility before entering" and allow a "companion or passer-by to perform reconnaissance while the person with the disability waits in the vehicle" for information regarding barriers, insufficiently side aisles and inaccessible bathrooms; (3) "variable and unpredictable nature of limitations" resulting in an individual arriving at the store with the intention to go in the store, "only to find they must wait in the car due to worsening symptoms" or the "need to rest before leaving a vehicle"; and (4) "help and safety" since some "people with disabilities need periodic supervision" and a parking spot close to an entrance "allows assistants to check on the person" and "allows for a greater probability that help could be sought if needed". *March 17, 2009, Letter from Legal Services of New Jersey, page 2.*

Legal Services said that "[a]ny attempt to restrict the ability of people with disabilities from these legitimate kinds of uses of disabled parking placards would unnecessarily limit their mobility and restrict their participation in the State's economic and social life" and disagreed that "there is only one legitimate use for handicap parking" at a given location. *Id.* Instead, Legal Services suggested that "there are many reasons why a disabled person might wish to stay in a

parked car” and that a change in the law such as the one initially proposed will “require an inquiry as to the intent of the permit holder every time he or she sits in the vehicle for ‘too long’” creating “a subjective standard would be difficult, if not impossible, to fairly enforce”. *March 18, email response from LS, page 1.*

The concerned citizen who initially sought the modification to the law, however, suggested that “the parking space was put there so disabled people have close access to a building, PERIOD.” *March 19, RE email response, page 1.* She reasoned that the “whole purpose of the ADA is to make sure disabled people have access to the same things as non-disabled people” and that access is the key. *Id.* She suggested that emergency situations need not preclude the requirement that the individual exit the vehicle, and that the non-emergency situations described by Legal Services could be handled by the disabled individual “without depriving someone of the ability to utilize the parking space for its intended purpose, that being to allow them to have the shortest distance to travel from their car to the building.” *Id.*

The concerned citizen also said that, in the examples provided by Legal Services, a disabled parking space is not required to deal with the issues presented.

What disabled people need is a disabled parking spot so they have close access to a building they wish to ambulate to, whether on foot or with the assistance of wheelchair or scooter. That’s why the spaces are close to the entrances. That’s why they have certain required dimension, to accommodate the disabled people who need more room to exit their vehicles. There should be no other reason those spaces should be used than to park, get out, go in, then come out, get in, and leave. It is that simple.

*Id* at 2.

One of the Legal Services attorneys who provided comments on this project was willing to offer information based on his experience as a life-long quadriplegic. *April 23, 2009, letter from Legal Services.* He explained that he shared the experience of the concerned citizen of driving to a location only to find that no handicapped parking spaces are available. *Id.* He also explained that, as a power wheelchair user, exiting his van involves his driver spending several minutes assisting him with securement devices and a folding ramp. *Id.* Since many locations are not fully accessible to him, he must make a “case-by-case assessment of whether it is worth the effort” of leaving his van. *Id.* “A rule that would mandate exiting a vehicle in a disabled parking space would place a very real burden on” him and “on similarly situated people”. *Id.*

A comment from a second concerned citizen was received in response to this project via email. That commenter agreed with Legal Services’ position and explained that her mother, a senior citizen disabled due to a heart condition, was “terrorized by local vigilantes” in Glassboro while parked in a handicapped parking space. *July 31, email from KW, page 1.* She indicated that the local police had explained that the “vigilantes” are two individuals who “fight for the rights” of the handicapped by photographing and filming individuals parked in handicapped spaces who “are not handicapped” in the eyes of the “vigilantes”, who then report the parkers to the local police where “a police officer and/or a judge signs the ticket which is then mailed”. *Id.* Her mother went to Court and showed her handicapped placard and the case against her was dismissed, but there were others in the courtroom that day as a result of the actions of the

“vigilantes”. *Id.* The commenter suggested that it was inappropriate that New Jersey law allows citizens to take the kind of harassing, bullying action to which her mother was exposed. *Id.*

In subsequent correspondence, Legal Services suggested that in addition to the concerns raised previously, the proposed change in the law would require police to inquire into “sensitive and private medical information to determine if the person met vague and undefined criteria for an emergency”. *September 16, 2009, letter from Legal Services.* It was suggested that attempts to enforce the law could result in civil rights violations or violations of the Americans with Disabilities Act (“ADA”), the Rehabilitation Act and New Jersey’s Law Against Discrimination (“LAD”). *Id.* A brief review of these laws by Staff reveals some support for the position taken by Legal Services. While the preliminary review did not reveal any case law directly on point, and the statutory/regulatory language is not entirely clear, it appears that a good faith argument could be made that requiring that an individual with a disability enter or exit the vehicle could violate the ADA and the New Jersey LAD.

New Jersey’s Division of Disability Services, on the other hand, indicated that it frequently receives telephone complaints related to the issues raised in support of the modification to the statutory language to eliminate the “loophole” in New Jersey’s Handicapped Parking Law. In addition, DDS has received complaints from individuals in shore resort areas and municipalities in the New York commuter corridor indicating that all of the handicapped spaces in those areas are routinely filled for extended periods of time by employees of neighboring businesses. DDS also noted that a preliminary review of the federally issued materials regarding this subject indicated that the intent of handicapped parking is to access and egress to a place of public accommodation and, in doing so, minimize the physical hardship and maintain the safety of the individual with the disability. *September 29, 2009, email comments from DDS, page 1.*

DDS suggested that handicapped parking spaces are frequently “misused” by drivers who remain in the car doing things that do not require their exit or who remain in the car while a non-disabled individual “runs in” to the store or other building. It is the position of DDS that neither of these falls within the intent of handicapped parking as described by federal materials on this issue. *September 29, email comments from DDS, page 1.* As mentioned above, a review of some of the federal materials could be read to support either side of this argument, but does not yield a single clear result.

While acknowledging the merit of the arguments raised by Legal Services, it was the suggestion of DDS that individuals who found themselves in the situations described by Legal Services could use other parking spaces or other areas if they needed to rest or to allow pain to subside before driving. DDS suggested that arguments similar to those raised by Legal Services have been made on behalf of those who occupy handicapped bathroom stalls for purposes other than using the facility (reading the newspaper or changing clothing) and the Disability and Business Technical Assistance Center has taken the position that management or a regulatory authority is empowered to take action to make sure that the accessible bathroom stall remains available to those who need it for its intended purpose. *September 29, email comments from DDS, page 1.*

DDS suggested that, with an exception for emergencies, the proposed revision to the statutory language is an appropriate attempt to curb known abuses of handicapped parking spaces. DDS indicated that while common sense was required when making determinations of abuse, modifying the law would give law enforcement the discretion to act in “circumstances of clear abuse and misuse”. *September 29, email comments from DDS, page 1-2.*

In a meeting with attorneys from Legal Services earlier this month, examples of issues not readily covered by the “emergency” example were discussed. One example is the issue faced by individuals whose disability is such that they must, if they are not going in to the store with their aid or assistant, be visible to that person so they can be checked on periodically to determine if they require assistance. Another example is the problem faced by those whose disability allows them some periodic mobility, but worsens after a relatively short period of time or even unpredictably. While such a person may be able to park in a space other than a handicapped space on some occasions if they anticipate entering a store for a brief errand, they may find that they are unable to complete their errand as a result of the nature of their disability and then, if their car is some distance from the store, it poses a real problem.

Finally, at the October meeting of the NJPTOA, the officers provided comments based on their experiences on behalf of either the State or a municipality regarding current handicapped parking enforcement practices and the potential difficulties associated with enforcement if the law was changed. While sympathetic to the issues underlying the proposed revision, the officers were also mindful of the practical difficulties associated with enforcement, echoing some of the concerns raised by Legal Services in its September 16, 2009 letter.

As indicated above, the individual in the Office of Disabilities Management, Department of Treasury, who is also the statewide ADA Coordinator for the State of New Jersey, takes no position on the issue and the comments prepared on behalf of DCR were not approved for release before the October Commission meeting.

**C. *Current statute.***

*N.J.S.A. 39:4-138* currently provides, in pertinent part, that

Except when necessary to avoid conflict with other traffic or in compliance with the directions of a traffic or police officer or traffic sign or signal, no operator of a vehicle shall stand or park the vehicle in any of the following places:

...

*o.* In any space on public or private property appropriately marked for vehicles for the physically handicapped pursuant to P.L.1977, c. 202 (C.39:4-197.5), P.L.1975, c. 217 (C.52:27D-119 et seq.)<sup>1</sup> or any other applicable law unless the vehicle is authorized by law to be parked therein and a handicapped person is either the driver or a passenger in that vehicle. State, county or municipal law enforcement officers or parking enforcement

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<sup>1</sup> The first section cited permits the establishment of restricted parking places for use by those to whom a special vehicle identification card has been issued, the second is the State Uniform Construction Code Act.

authority officers shall enforce the parking restrictions on spaces appropriately marked for vehicles for the physically handicapped on both public and private property.

***D. Draft language.***

The option for the language of the statute considered by all of the commenters incorporated the “emergency” exception suggested by Commissioner Pressler at the March meeting, and would change the pertinent statutory language to read as follows:

Except when necessary to avoid conflict with other traffic or in compliance with the directions of a traffic or police officer or traffic sign or signal, no operator of a vehicle shall stand or park the vehicle in any of the following places:

...

*o.* In any space on public or private property appropriately marked for vehicles for the physically handicapped pursuant to P.L.1977, c. 202 (C.39:4-197.5), P.L.1975, c. 217 (C.52:27D-119 et seq.) or any other applicable law unless:

(1) the vehicle is authorized by law to be parked therein;

(2) and a handicapped person is either the driver or a passenger in that vehicle; and

(3) except in an emergency, the handicapped person exits or enters the vehicle while it is parked in the space.

State, county or municipal law enforcement officers or parking enforcement authority officers shall enforce the parking restrictions on spaces appropriately marked for vehicles for the physically handicapped on both public and private property.

***E. Request for Commission determination.***

To this time, there has been some support for the proposed change to the law, but there are arguments against such a change and the case law and the statutory and regulatory language do not clearly support or prohibit the change. In addition, it is recognized that the majority of the states do not impose the requirement of entering or exiting the vehicle. Further, there are certain problems posed by the requested change that are not readily cured by the emergency exception or other concisely drafted language and enforcement difficulties appear to be a legitimate concern. Staff seeks guidance from the Commission regarding whether or not to continue with this project.