

To: Commission
From: Staff
Re: Handicapped parking
Date: September 7, 2009

MEMORANDUM

Introduction

A. *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.)¹ 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 authority officers shall enforce the parking restrictions on spaces appropriately marked for vehicles for the physically handicapped on both public and private property.

B. *Project summary.*

This project began in earlier this year when Staff was contacted by a concerned citizen regarding handicapped parking in New Jersey. At that time, the concerned citizen 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 only requires 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. In response, Legal Services of New Jersey objected to the proposed modification to the law. The concerned citizen who initially proposed the modification disagreed with the assertions of Legal Services in objection to the proposed change.

In an effort to obtain additional comment on this matter, input was sought from New Jersey’s Division of Disability Services (“DDS”), and from the individual in the Office of

¹ 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.

Disabilities Management, Department of Treasury, who is also the statewide ADA Coordinator for the State of New Jersey. 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.

C. 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. It is a short straight waterway connecting the Manasquan River to the Atlantic Ocean. 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 and consists of a long straight parking lot with parking spaces on both sides, 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. Meanwhile, someone like me comes along who wants to fish right there, near the bathrooms, near the steps that go down to the sand in front of the wall - and I am deprived of using the space for what it is intended to be used for, because New Jersey law only requires the disabled person to be in the vehicle, not that they exit the vehicle, while it is parked there.

Objection to modifying this law was received from Legal Services of New Jersey. That organization "opposes 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 asserted 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”. *Id.* They disagreed with any suggestion that “there is only one legitimate use for handicap parking” at a given location and suggested that “there are many reasons why a disabled person might wish to stay in a parked car.” *March 18, email response from LS, page 1.* Legal Services suggested 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’” and that such “a subjective standard would be difficult, if not impossible, to fairly enforce”. *Id.*

The concerned citizen who initially sought the modification to the law disagreed, and expressed her concern that the Legal Services response was drafted without “experience or insight into the disabled world”. She 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 also noted that there “are a lot of situations that could happen to lots of different people, disabled or not, while they are out in public” and that while a disabled person might “happen upon a disabled parking space as they are experiencing pain or shortness of breath... whatever space they happen upon in that situation would be where they stop or pull over, and... would be acceptable in light of the situation being out of their hands.” *Id.* She indicated 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.* She said, in response to the Legal Services submission, “why add all of those things to a list of reasons why a disabled person may park in that space and stay in their car? That’s NOT why it’s there! If all the cars in those spaces are permitted to have people sitting them for an ever growing variety of reasons, then what happens to those who need to exit their cars and actually walk into 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.

New Jersey's Division of Disability Services 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.

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.

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.

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".

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.

One additional comment was received in response to this project via email. In that email, a second concerned citizen indicated that she agreed “with the findings by Legal Services”, claiming 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*. The “vigilantes”, the local police explained, 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.*

The commenter’s 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.*

Draft

One option for the language of the statute, which incorporates the “emergency” exception suggested by Commissioner Pressler at the March meeting, 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.