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July 28, 2024

BY EMAIL

ADA
New York State Parks
Equality@parks.ny.gov

Re: Notice of Dangerous Condition – LED Street Lights

Dear New York State Parks,

This letter serves to provide Constructive Notice that the use of Lighting Emitting Diodes in street lighting, parking lot lighting, displays and signs, indicator lights, interior lighting, vehicle lighting, and flashing lights can create dangerous conditions and discriminatory barriers. LED lights have been proven to impair vision and cognitive functioning and can cause non-epileptic and epileptic seizures. The US Food and Drug Administration has not vetted LED lights for photobiological, neurological, psychological, or hormonal safety. LED lights are unregulated and can create hazardous, dangerous, and discriminatory conditions.

The US Department of Energy states that LEDs are a “radically new technology” that emit a “directional” light with “unique characteristics”.¹ It is the directional nature of LEDs and their unique characteristics that make LEDs unsuitable for most lighting applications because of the dangerous conditions and discriminatory barriers that LED lights create.

28 C.F.R. § 35.151(a)(1) states:

Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.²

28 C.F.R. § 35.151(b)(1) states:

Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is

¹ https://www1.eere.energy.gov/buildings/publications/pdfs/ssl/ssl_lessons-learned_2014.pdf

² <https://www.law.cornell.edu/cfr/text/28/35.151>

readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

The NYS PSC Case 21-02623 has already established in the public record that LED streetlights trigger seizures and other acute adverse reactions, and therefore it has already been established that LED streetlights are unsafe and create a discriminatory barrier. The alteration of adding an LED streetlight may trigger non-epileptic or epileptic seizures, migraines, or other acute neurological reactions, and thus violate ADA requirements. It is important to note that the concept of providing ADA accommodation for an LED streetlight is not applicable, because the LED streetlight would have been installed after 1992.

Here are a few reports of neurological, psychological, and physical injury caused by LED devices:

- Minnesota Department of Human Rights – LED RRFB – (<https://www.softlights.org/wp-content/uploads/2023/06/74059-6-15-2023-ECP-Memorandum-.pdf>)
- Seizure – LED RRFB - (<https://www.softlights.org/wp-content/uploads/2022/09/MA-Incident-Report.pdf>).
- Emergency Vehicle – Seizure Reaction / Panic Attack - (<https://www.softlights.org/wp-content/uploads/2021/09/Encounter-with-Emergency-Vehicle.pdf>)
- LED Incident Reports - (<https://www.softlights.org/led-incident-reports/>)
- NYS PSC Case 21-02623 Public Comments on LED streetlights – (<https://tinyurl.com/3b9farmy>)

On May 24, 2024, the US Food and Drug Administration issued a decision to not publish performance standards for any LED product, despite the requirements of 21 U.S.C. 360ii. Thus, given the numerous reports of harm and discrimination caused by LED lights and the lack of regulation from the FDA, all LED products must be vetted to ensure that the directional nature and unique characteristics of the LED product do not create a dangerous condition and that a constructed or altered area containing an LED device, including vehicles, is readily accessible and usable by all individuals with disabilities, including, but not limited to, individuals with epilepsy, migraines, autism, EMS, and PTSD.

On behalf of MarieAnn Cherry, an individual diagnosed with epilepsy, Donald Berry, an individual diagnosed with PTSD, and Mark Baker and James Rader, individuals diagnosed with autism, the Soft Lights Foundation is notifying New York State Parks that Ms. Cherry, Mr. Berry, Mr. Baker and Mr. Rader may be injured and discriminated against if they encounter LED floodlights or streetlights such as the one in Letchworth State Park as shown in Figure 1.



Figure 1 - Discriminatory LED Light, Letchworth State Park

The Soft Lights Foundation therefore requests the removal of LED lights at Letchworth State Park and all other New York State Parks to ensure the safety of, and equal access to New York State Parks for, Ms. Cherry, Mr. Berry, Mr. Baker, Mr. Rader, and all individuals with disabilities. The alteration of adding such LED lights is a violation of 28 C.F.R. § 35.151(b)(1), and thus the altered area must be restored to its previous nondiscriminatory condition. Failure to eliminate the dangerous conditions and/or discriminatory barriers created by LED lights may result in an injury liability claim against New York State Parks and/or discrimination lawsuit.

The Soft Lights Foundation requests that the New York State Park officials comply with their fiduciary duties, such as duty of care to others, and act to ensure that nobody is harmed by LED lights.

Sincerely,

/s/ Mark Baker

President

Soft Lights Foundation

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