

Development Rights

Ben Reznik Selected as one of California's "Top 100" Lawyers

Benjamin M. Reznik, Partner and Chairman of the Government, Land Use, Environment & Energy (GLUEE) Department at Jeffer Mangels Butler & Mitchell LLP (JMBM), has been selected to join the prestigious ranks of California's "Top 100" lawyers by the *Daily Journal*, the state's largest legal news provider. The list was published in the September 22 issue of the publication.



Chairman of JMBM's Government, Land Use, Environment & Energy Department honored by inclusion in the *Daily Journal's* prestigious list.

"Ben has become one of the most effective lawyer lobbyists in the state and we are gratified that his accomplishments are being recognized with this high honor," said Bruce Jeffer, managing partner of JMBM. "Since joining our firm in 1997, Ben has successfully shepherded some of the most complex and controversial projects in the state. He knows how to deliver. Congratulations to Ben from all of us at JMBM."

A graduate of the USC Gould School of Law, Reznik has been practicing law in Los Angeles since 1976. Over his career, he has represented a wide diversity of clients ranging from major real estate developers to internationally recognized companies in pursuit of their corporate projects. His work on behalf of G. H. Palmer

Associates has led to the development of over 3,500 residential units in downtown Los Angeles. He is currently working with Palmer on the entitlement of an additional 1,400 residential units near the USC campus. Reznik has also been instrumental in winning lawsuits which will have broad impacts on development issues including inclusionary zoning and the ability of cities to adopt development moratoria.

Reznik's other current high profile cases include efforts to bring a new shipyard to the Port of Los Angeles as well as his representation of a partnership led by Hudson News, Magic Johnson Enterprises and Dale Mason Cochran (widow of Johnnie Cochran) in their pursuit of retail concessions at Los Angeles International Airport. ■

As Chair of the Firm's GLUEE Department, Ben's practice emphasizes real estate development entitlements, zoning and environment issues, including frequent appearances before city planning commissions, city councils and other governmental boards and agencies on behalf of real estate development firms and various industries. For more information, contact Ben at 310.201.3572 or BMR@jmbm.com

ADA Alert: New Regulations Now in Effect

by *Martin H. Orlick and James O. Abrams*

On July 23, 2010, the U.S. Attorney General signed into law important revisions to the Department of Justice's (DOJ) Regulations implementing the Americans with Disabilities Act. The new regulations include substantial and far reaching revisions to the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which are now known as the 2010 ADA Standards for Accessible Design (2010 Standards). On September 15, 2010, the new Regulations/2010 Standards were published in the Federal Register, thereby triggering two important implementation dates: March 15 of 2011 and March 15 of 2012.

Compliance with the new Regulations will be required beginning March 15, 2011, with the exception of (1) the new obligations of hotels to modify their reservation policies relating to individuals with disabilities, and (2) the 2010 Standards. These two components will be mandatory effective March 15, 2012; however, compliance with the 2010 Standards is permitted as of September 15, 2010, and any public accommodation or commercial facility that is newly constructed, altered, or undergoes "readily achievable barrier removal" prior to March 15, 2012, should include consideration of the new 2010 Standards and incorporate them as appropriate.

The new Department of Justice's Regulations/2010 Standards affect all U.S. hotels, financial institutions, shopping centers, retail stores, recreational facilities, and other properties such as restaurants that are classified as a

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“public accommodation” or a “commercial facility” under the American with Disabilities Act of 1990 (ADA).

The new 2010 Standards impose both technical requirements, (i.e. the specifications a property must meet to be fully accessible), and scoping requirements (i.e. the number of rooms or elements in a facility which must be fully accessible).

The new 2010 Standards affect all U.S. hotels, financial institutions, shopping centers, retail stores, recreational facilities, and other properties such as restaurants that are classified as a “public accommodation” or a “commercial facility.”

Existing property owners will need to review their facilities to ensure they are in compliance with the appropriate standards (either the 1991 or the 2010 Standards) and retrofit where necessary to meet them. Developers of new hotel properties will need assurance from their design and construction companies that these new obligations and restrictions will be worked into their plans. Among other things, the 2010 Standards will require that most recreational facilities and the primary path of travel in employee work areas be accessible — and this is just the tip of the iceberg. The 2010 Standards may well require changes to ATM machines and other bank facilities.

Similarly, all public accommodations must review their policies and procedures, auxiliary aids and

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Area Planning Commissions Need Help by Benjamin M. Reznik

In the City of Los Angeles we have seven Area Planning Commissions (known as “APCs”), each consisting of five volunteer members appointed by the Mayor and covering a distinct geographical part of the city. These APC commissioners need not and, in fact, do not possess any special training, knowledge or experience in land use matters, and certainly are not familiar with the body of land use and zoning laws applicable to many of their decisions. Pursuant to the city charter and zoning code, the APCs are empowered to decide many important cases. In many instances, the decision of the APC is final — meaning there is no further right of appeal to the City Council. The only remedy left is litigation and that, all too often, is too expensive for modest projects. The impact of a negative APC decision can be devastating to an applicant, as it can result in significant financial losses — sometimes millions of dollars. Yet, despite all this, the City of Los Angeles does not provide legal counsel to guide APCs during the hearing and in their deliberations on the merits of a case. Planning Department staff is present at the hearings, but no one from the City Attorney’s Office is present to make sure that the law is followed.

The results in many instances are predictable. Decisions have been rendered which are not supported by the evidence, which are contrary to the law, and which — in some circumstance — are “results oriented.” This is extremely unfair and prejudicial to people who purchase properties in reliance on what the law permits them to build, only to be told by an APC that their application is denied. I have firsthand knowledge of many such unfortunate experiences involving clients. In a recent case, one of the APCs ignored the advice of the Department of Building & Safety and of the Planning Department, where a restaurant was permitted to use the

existing “grandfathered” number of parking spaces for this site. Statements made by some of the commissioners at this hearing demonstrated that they did not care what the law was or how the city has always applied it because they, the commissioners, did not like the result. So this APC ruled that the building permit must be revoked. JMBM filed a lawsuit and the court ruled in our client’s favor. Now our client is able to proceed against the city for damages caused by the illegal revocation of the building permit.

Staff is present at the hearings, but no one from the City Attorney’s Office is present to make sure that the law is followed.

The reason that the City Attorney does not provide the APCs with legal support at the hearings is due to budgetary constraints; however, one has to wonder whether in the long run it may be less costly for the city to provide the attorneys. ■

Our team has experience representing a wide range of industries, businesses, trade groups and individuals at every level of government, particularly in the state of California. Our political and regulatory background means we understand how government works, making us effective advocates for our clients’ interests.

Benjamin M. Reznik is Chairman of the Firm’s Government, Land Use, Environment and Energy Department. For more information, contact Ben at 310.201.3572 or BMR@jmbm.com

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services, and operations to be sure that they comply with the new Regulations — including the new rules regarding service animals and the obligation to admit disabled individuals who use Segway Personal Transporters® — when they become effective March 15 of 2011.

You can avoid the surprise of an ADA lawsuit by acting early.

The U.S. DOJ is enforcing ADA compliance through audits, voluntary compliance programs and, in some cases, through lawsuits. In some states, like California, accessibility advocates and their plaintiff lawyers, have brought ADA lawsuits against thousands of California businesses, including hotels.

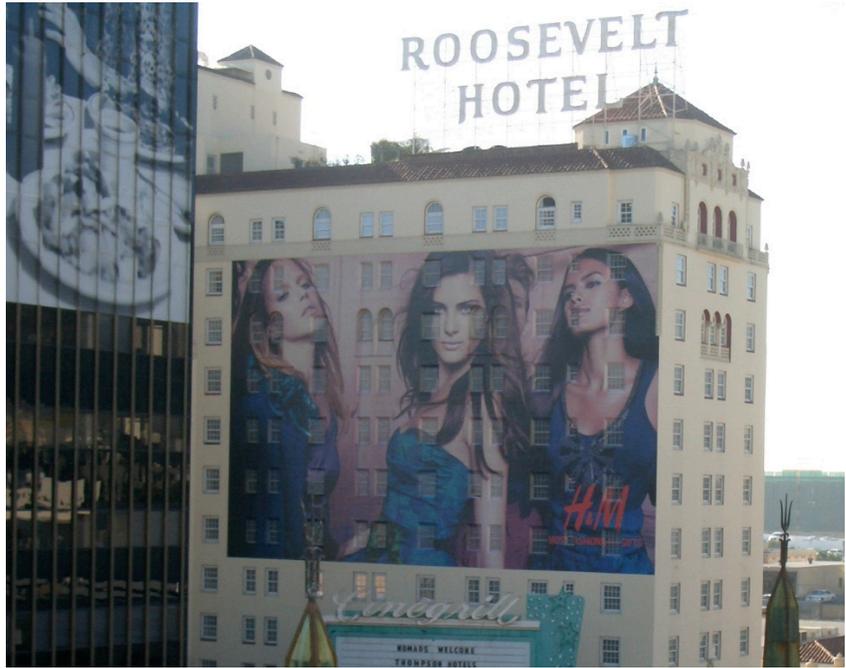
You can avoid the surprise of an ADA lawsuit by acting early to bring your properties into compliance.

The new ADA regulations can be downright confusing to navigate alone. Please call on us to help interpret the Department of Justice's regulations and understand how both they and the 2010 Standards will affect both the physical and operational aspects of your business. ■

Martin H. Orlick is a senior member of Firm's Global Hospitality Group® and a partner in the Firm's Real Estate Department. He has helped clients with more than 300 ADA cases for hotels and other businesses. He is also a member of the American College of Real Estate Lawyers (ACREL). For more information about ADA compliance and defense, contact Marty at 415.984.9667 or MOrlick@jmbm.com

James O. Abrams is a senior member of the JMBM Global Hospitality Group® and the former President and CEO of the California Hotel & Lodging Association. Jim has advised hundreds of lodging operators about, and written and lectured extensively on, all aspects of accessibility laws that apply to the hospitality industry. For more information, contact Jim at 415.398.8080 or JAbrams@jmbm.com

UPDATE: Los Angeles City Council Approves Ban on New Supergraphics in Hollywood by Sheri Bonstelle



Source: Thompson Hotels

The right to install a supergraphic on a side of a building in Hollywood has been an ongoing struggle between owners and the City for years. The attorneys at JMBM have extensive experience in representing hotel owners and sign companies in obtaining appropriate City Council approval. Call us to see how we can help.

The Los Angeles City Council voted unanimously in September to ban the installation of new “supergraphic” advertising displays in Hollywood, while grandfathering in currently planned signs and allowing for designated “sign districts.”

The new Hollywood outdoor advertising regulations, which prohibit large vinyl signs on facades of hotels and other multi-story buildings, reflect an earlier U.S. 9th Circuit Court of Appeals ruling allowing a citywide ban of the signage.

The ordinance still permits digital billboards up to 300 square feet in specific areas in Hollywood along Vine Street and Hollywood, Sunset and Cahuenga Boulevards. Up to 16 supergraphic signs received City Council approval under the previous regulations and will be installed in several locations in Hollywood, including signage for projects entitled by JMBM land use attorneys. ■

Sheri Bonstelle is an attorney in the Firm's GLUEE Department. Sheri's practice focuses on land use and construction matters. Sheri is both a lawyer and an architect. For more information, contact Sheri at 310.712.6847 or SBonstelle@jmbm.com