

MEMORANDUM – September 5, 2023

Title II of the Americans with Disabilities Act requires that people with disabilities have equal access to local government programs, service and activities. Title II requires that buildings and facilities built or renovated since 1992 comply with the ADA Standards for Accessible Design. All programs, services and activities offered by a public entity must be held in physically accessible locations. Accessibility is required unless doing so would create an undue administrative or financial burden on the public entity.

Covered under ADA Title II are all state and local governments. Disability is defined as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” §35.108

Title II is not limited to physical accessibility, but also applies to online settings including any means of communication such as websites. Web content must be accessible to users regardless of their abilities.

Requirements for Compliance with ADA

The requirements of the ADA Title II are set forth at 28 CFR Part 35. The City may be in compliance with many of these requirements. Title II requires public entities to take several steps to become compliant with the ADA.

All public entities must:

- Conduct a self- evaluation.
- Provide public notice about the ADA.

Public entities with 50 or more employees are also required to:

- Designate an employee to oversee Title II compliance.
- Establish a grievance procedure.
- Develop a transition plan if structural changes are necessary for achieving program accessibility.

More details on each of these requirements is discussed below.

I. Conduct an ADA self-evaluation (§35.105)

The ADA requires that all local governments identify and correct any barriers to access. The self-evaluation must:

- Evaluate current facilities, programs, services, policies, and practices for accessibility compliance

- Identify necessary changes to become compliant
- Provide an opportunity for the public to participate in the self-evaluation process

Identify all programs, activities, and services and their locations.

- 1) Survey facilities and determine whether there are physical barriers to access programs. If structural changes are needed, include them in the transition plan.
- 2) Determine whether employees and officials are familiar with the public entity's ADA obligations.
- 3) Determine whether employees and officials know how to arrange for auxiliary aids and services, such as sign language interpreters, material in Braille and assistive listening systems; to ensure that communication with people with disabilities is as effective as others.
- 4) Review service, activity and program's policies and procedures to determine whether they ensure an equal opportunity for people with disabilities to participate and benefit.

II. Provide Public Notice about ADA. (§35.106)

Posting to a website, in addition to other physical posting in public buildings. The posting should include the grievance procedure with the city and identify the ADA Coordinator. **We do not have any statement posted.**

III. Designation of an ADA Coordinator (§35.107)

The ADA requires municipalities to designate at least one employee to manage ADA Compliance. The person in this role, regardless of title, is the municipality's point of contact for all ADA matters.

The ADA Coordinator is responsible for investigating complaints regarding accessibility and ensure ongoing compliance. The coordinator should also be involved in developing and implementing the transition plan. The Coordinator should be aware of engineering and design issues related to accessibility.

The person selected as ADA Coordinator must have the authority to address issues. **We do not currently have an ADA Coordinator .**

IV. Establish and provide notice of a Grievance procedure (§35.107)

This can be accomplished quickly based on similar procedures adopted by other similar communities. **We do not currently have a procedure**

V. Develop a Transition Plan (§35.150)

Public entities were required to develop a transition plan by July 26, 1992, and complete any structural modifications before January 26, 1995 It is recommended that the City reassess all of its existing programs, services, facilities using the current ADA Standards (2010). The transition plan requires the following:

- A list of the physical barriers that limit the accessibility of programs, activities, or services.

- The methods to remove the barriers and make the facilities accessible.
- The schedule to get the work completed.
- The name of the official responsible for the plan's implementation.
- An opportunity for interested persons, including those with disabilities and organizations representing those persons, to participate in the development of the plan

Staff was unable to locate any legislation addressing the ADA self-evaluation and no records exist regarding any previous study or assessment relating to accessibility. All building done by the City has included ADA compliance.

Potential Consequences and for Non-compliance/benefits for compliance

Enforcement may be accomplished through multiple avenues. Initially, an aggrieved person may follow the City's grievance procedure. An individual may also take formal actions as provided in Title II which include filing a complaint with the Department of Justice or another federal agency, or filing a civil lawsuit. Title II does not require that an aggrieved person exhaust administrative procedure before filing in court.

Violation of the requirements of Title II could adversely affect the City, resulting in harsher mandates, bad press, or the possibility of becoming a DOJ Project Civic Access subject. As a result, someone else would control and dictate the process, including the amount of financial resources and schedule for compliance.

Benefits of compliance include better engagement with persons who suffer from disabilities, an increasing portion of the population. The percentage of the population who suffer from disabilities in the United States has increased from 43 million in 1990 to 58 million in 2020. Any enhancements would also benefit other members of the community including those with small children and the aging population. As we learned during the pandemic, the general increase in availability of virtual environments allows better access and engagement for all.