What You Need to Know About the Americans with Disabilities Act (ADA) For Local Government

(5 Hours Continuing Education)

Thursday, March 14, 2019

Arkansas Municipal League Headquarters

North Little Rock, AR

9:00 a.m. – 9:05 a.m.	Welcome and Opening Remarks

Mayor Joe Smith, League President

North Little Rock

Whitnee Bullerwell, Deputy Director

Arkansas Municipal League

9:05 a.m. – 10:15 a.m. The ADA: History and an Overview

Kirk Tcherneshoff, President, Tcherneshoff Consulting, Inc.

10:15 a.m. – 10:30 a.m. Break

10:30 a.m. – 11:00 a.m. Employer Obligations Under Title I of the ADA

Amanda LaFever, Litigation Counsel

Arkansas Municipal League

11:00 a.m. – 11:15 a.m. Engaging in the Interactive Process of Title I

Tracey Pew, SPHR, SHRM-SCP

Director of Human Resources, Arkansas Municipal League

11:15 a.m. – Noon Local Government Obligations Under Title II of the ADA

Kirk Tcherneshoff, President Tcherneshoff Consulting, Inc.

12:00 p.m. – 1:00 p.m. Lunch

1:00 p.m. – 2:00 p.m. ADA Little "c" complaints and Big "C" Complaints: What's

the Difference and How Do You Address Each One

Amanda LaFever, Litigation Counsel

Arkansas Municipal League

2:00 p.m. – 2:15 p.m. Break

2:15 p.m. – 2:30 p.m. The Reality of the Big "C:" What Happens If Your City is

Noncompliant?

Mayor Virginia Young Sherwood, Arkansas

2:30 p.m. – 3:00 p.m. The Barrier Removal Process

Darren Austin, Assistant Director Sherwood Parks & Recreation

3:00 p.m. – 3:30 p.m. Question & Answer Session

Kirk Tcherneshoff, President, Tcherneshoff Consulting, Inc.

Amanda LaFever, Litigation Counsel Arkansas Municipal League

Tracey Pew, SPHR, SHRM-SCP Director of Human Resources Arkansas Municipal League

Mayor Virginia Young Sherwood, Arkansas

Darren Austin, Assistant Director Sherwood Parks & Recreation

3:30 p.m. Concluding Remarks

Mark R. Hayes, Executive Director

The Disability Movement and the History of the ADA

- Great article regarding the history of the disability movement:
 - o https://artsandculture.google.com/exhibit/VwLy4PBo_Ty9Jg
- Ed Roberts, Judy Heumann, and ADAPT
 - o Ed sues the state of California for claiming he was too "crippled" to go to college.
 - o Judy sues New York Education System for not granting her a teacher's license.
 - o ADAPT protests against nationwide bus systems for not being accessible.
- Section 504 of the Rehabilitation Act of 1973
 - All buildings and programs receiving federal funding must provide accessibility to people with disabilities.
- Justin Dart, Jr., who is widely thought of as the "father" of the ADA, was born in 1930 to a very wealthy, prominent family. Growing up, Justin was very misbehaved, attending seven high schools, but never graduating. He later described himself as a "super-loser," admitting that he didn't like himself. In 1948 Justin contracted polio and was given three days to live. It was at this point in his life that Justin changed directions. Justin felt loved and was given affection by those around him and liked the feeling. In turn, he began to treat people with respect and love. Although polio turned Justin into a wheelchair user, it did not kill him. He went on to receive his bachelors and master's degrees, then began to work in business. In Japan, Justin was the president of Tupperware Japan, where he hired women and people with disabilities to empower them. Justin was interested in more than money he wanted to create social change. Soon executives in the U.S. told Dart, according to Mouth Magazine, "to stop promoting women to executive positions [and to] stop his disability campaign." Upon hearing these orders, Justin and his wife, Yoshiko, resigned.

In the early 1980's, Dart was a member and eventually the chair of the Texas Governor's Committee for Persons with Disabilities. In 1981, President Reagan selected Dart to be the vice-chair of the National Council on Disability. At this time Justin and Yoshiko began a national tour, stopping in every state to gather stories from individuals with disabilities. Their goal was to collect accounts of injustices and hardships that disabled people faced in order to create a piece of legislation that would finally address discrimination against people with disabilities in America. The Darts did all of this at their own expense, twice.

After meeting with disabled people across the nation, Justin and Yoshiko brought the stories they collected back to Washington, D.C. and began working towards legislation that is now known as the Americans with Disabilities Act (ADA). Upon



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receiving the information collected, Senator Tom Harkin from Iowa worked with many other prominent leaders to author the ADA. Harkin refers to the ADA as "an 'emancipation proclamation' for people with disabilities" and believes that disabled individuals "spend a lifetime overcoming not what God wrought, but what man has imposed by custom and law" (source: McCrone).

Senator Harkin worked very hard to pass the ADA and, on July 26, 1990, George H.W. Bush signed the Americans with Disabilities Act into law on the Whitehouse lawn. With Justin Dart on the stage beside him, the last words Bush spoke before signing the document into law were, "let the shameful wall of exclusion finally come tumbling down."

After the ADA was signed into law, Justin explained why the ADA is so significant for disabled individuals across America:

The ADA is a landmark commandment of fundamental human morality. It is the world's first declaration of equality for people with disabilities by any nation. It will proclaim to America and to the world that people with disabilities are fully human; that paternalistic, discriminatory, segregationist attitudes are no longer acceptable; and that henceforth people with disabilities must be accorded the same personal respect and the same social and economic opportunities as other people. (eeoc.gov)

Since the ADA was passed, individuals with disabilities have been able to improve their lives. The ADA is used daily to even the playing field for disabled people. Additionally, the ADA has been upheld and strengthened through lawsuits, such as the Olmstead case tried in the Supreme Court. With the ADA as support, individuals with disabilities can and will continue to take strides to improve their lives and their communities.

Capitol Crawl

On Monday, March 12, 1990 disability rights activists descended on the U.S. Capitol demanding the passage of the Americans with Disabilities Act (ADA) which would give equal rights to people with disabilities. The ADA was passed by the Senate the year before but as finding complications getting through the House of Representatives. Over 1,000 protesters came from 30 states to protest the Act's delay.

After the day's rally and speeches, over 60 activists abandoned their wheelchairs and mobility devices and began crawling the 83 stone steps up to the U.S. Capitol Building. During which people were loudly chanting "What do we want?" "ADA!" "When do we want it?" "NOW!" Other activists remained at the bottom holding signs and giving encouragement to the crawlers. "I want my civil rights," Paulette Patterson of Chicago stated as she was inching her way to the top. "I want to be treated like a human being." Eight-year-old Jennifer Keelan was famously taped while crawling up the stairs. "I'll take all night if I have to," she



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firmly stated. The second-grader from Denver suffered from cerebral palsy and decided to partake in the crawl after joining ADAPT (Americans Disabled for Accessible Public Transit). She was inspired by her friend Kenny Perkins who passed away in January 1990. As Jennifer reached the top she stated, "I'm doing it for Kenny." Michael Winters, a leader in the Independent Living Movement, later wrote about event and the reaction people had to the crawl. "Some people may have thought that it was undignified for people in wheelchairs to crawl in that manner, but I felt that it was necessary to show the country what kinds of things people with disabilities have to face on a day-to-day basis," Winters recalled. "We had to be willing to fight for what we believed in."

- The ADA is Signed into Law on July 26, 1990
- The Early Years Following the Passage of the ADA
 - State and local government entities are now required to provide program access to include access to all goods and services provided by local municipalities as well as their facilities
 - 1991 ADAAG takes effect requiring all new buildings constructed on or after January 26, 1993 to be fully accessible.
 - Voluntarily compliance is the rule not the exception.
- The Late 90's-2014
 - Lawsuits became prevalent as businesses and state and local government entities refused to comply with the law
 - o The 2010 ADA goes into effect March 15, 2012
- The Present State of the ADA
 - Lawsuits continue
 - More city governments and privately-owned businesses began to use funding sources for proactive access.



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256-364-2024



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The Disability Movement and the History of the ADA

PRESENTED BY: KIRK TCHERNESHOFF

Ed Roberts, Judy Heumann, and ADAPT

Ed sues the state of California for claiming he was too "crippled" to go to college.

Judy sues New York Education System for not granting her a teacher's license.

ADAPT protests against nationwide bus systems for not being accessible.



Section 504 of the Rehabilitation Act of 1973

All buildings and programs receiving federal funding must provide accessibility to people with disabilities.

The Role of Justin Dart and Senator Tom Harkin

Justin Dart traveled the country collecting stories of discrimination and exclusion of people with disabilities.

Mr. Dart is commonly referred to as the "father" of the ADA.

Senator Harkin introduced the ADA to the House of Representatives in sign language as his brother was hearing impaired.

Capitol Crawl

March 12, 1990 one of the largest and most visual demonstrations for civil rights in U.S. history.

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The 2010 ADA goes into effect March 15, 2012.

The Present State of the ADA

Lawsuits still continue.

More city governments and privately owned businesses began to use funding sources for proactive access.

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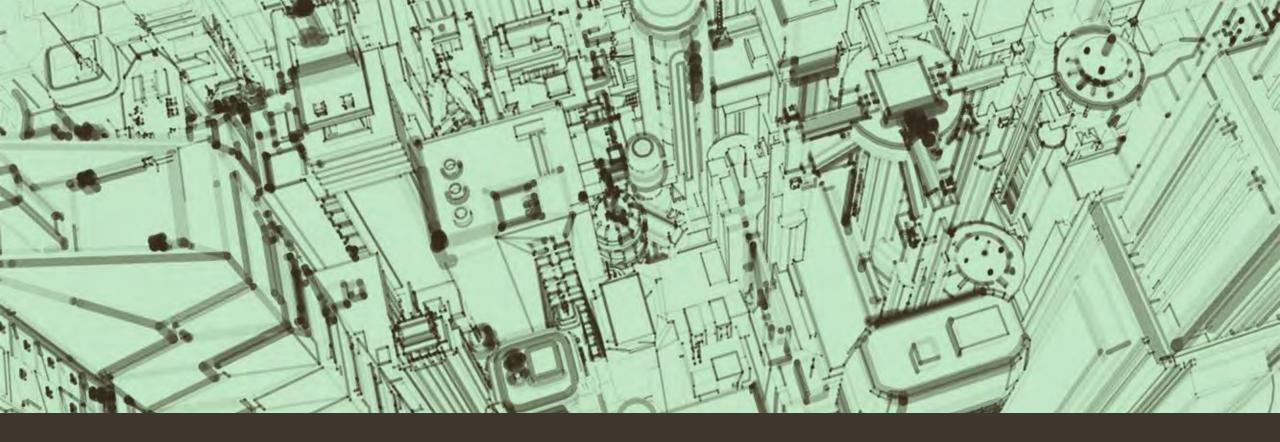
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Little "c" complaints & Big "C" Complaints:
What's the Difference?
How Do We Address Them?

Presented by: Amanda LaFever, J.D.

Title II: 42 U.S.C. § 12132

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

TITLE II

- Prohibits discrimination on the basis of disability by "public entities" such as state and local government agencies.
- Requires public entities to make their programs, services and activities accessible to individuals with disabilities.
- Outlines requirements for self-evaluation and planning; making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination; identifying architectural barriers; and communicating effectively with people with hearing, vision, and speech disabilities.
- Regulated and enforced by the U.S. Department of Justice.

What's a disability?

- Both mental and physical medical conditions
- Examples : Deafness, Blindness, Intellectual disability, Mobility impairments, Autism, Cancer, Diabetes, Cerebral palsy, PTSD, Major depressive disorder
- Doesn't have to be severe or permanent
- NOT considered disability for ADA purposes:
 - Pregnancy alone
 - Current illegal drug users

January 26, 1995

- (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
 - (1) A list of the interested persons consulted;
 - (2) A description of areas examined and any problems identified; and
 - (3) A description of any modifications made.



Little "c" complaints

The Not So MAGIC Number

- Do you have 50 or more employees?
 - ADA Coordinator
 - Grievance Procedure
- Do you have less than 50 employees?
- Notice Requirements



Why Is It Important?











BIG "C" COMPLAINTS

Relief Available

- Attorney's Fees
- Declaratory & Injunctive Relief
 - Compensatory Damages





NO LEAGUE COVERAGE

ARKANSAS MUNICIPAL LEAGUE



GREAT CITIES MAKE A GREAT STATE

September 28, 2015

Virginia Young, Mayor, City of Sherwood P. O. Box 6256 Sherwood, AR 72124

> RE. Chris Jonson v. City of Shorwood, et al., USDC Fastern District, Case No. 4:15-cv-578-SWW

Dear Mayor:

This letter is in response to your request for coverage of the above-referenced case pursuant to the terms of the Municipal Legal Defense Program ("Program"). Specifically, it is our understanding that the City of Sherwood is exquesting coverage

This matter will be accepted by the Program for defense purposes only and assigned to a Program Uitagator. The Program will defend the City of Sherwood. This acceptance is made pursuan, to paragraph 5(c)(xvii) of the Program brochure which

5(e)(coti): "Claims made pursuant to the Americans with Disabilities Act (ADA), the Rehobilitation Act, and am other state or federal law concerning disabilities und/or public property, or they may relate to the alteration, improvement, change or other like action in the municipalities' property, real or personal, except that any such case(s) may, subject to the remaining terms coul conditions of the Program, be defended by the Program, but in no event will enverage, monetary or otherwise, he provided:

Please note that no coverage, monetary or otherwise, is being provided for the case; therefore, the City will have responsibility for any and all settlements, and/or judgments in this matter. If the complaint is amended in anyway, i.e., additional employees or officials are later named officially and/or in their individual capacities, or additional claims are made, please notify us immediately and submit those individuals and/or elsions for coverage under the Program.

Balesville Never Rick Eurobaught, Pesident in Stephens Mayer famy, Rickert, Tist Vice Pesident in Libe Village Albamoth Stat Angal III, Vice Pesident, Ushfert I in North Life Reck Mayer Joe Said, Vice Pesident, District 2 in Fraith Group Aspen Sampt Holdan, Vice Hassidant, Dalist 22 in District Mayer Period Maybridge (District of a describer Dan Albamoth Control and Albamoth Control a

ix 38 • North Little Rock, AR • 72115-0038)1-374-9484 • Fax: 501-374-0541 • www.ormlesg

This matter will be accepted by the Program for defense purposes only and assigned to a Program Litigator. The Program will defend the City of Sherwood. This acceptance is made pursuant to paragraph 5(c)(xvii) of the Program brochure which reads as follows:

5(c)(xvii): "Claims made pursuant to the Americans with Disabilities Act (ADA), the Rehabilitation Act, and any other state or federal law concerning disabilities and/or public property, as they may relate to the alteration, improvement, change or other like action to the municipalities' property, real or personal, except that any such case(s) may, subject to the remaining terms and conditions of the Program, be defended by the Program, but in no event will coverage, monetary or otherwise, be provided;"

Please note that no coverage, monetary or otherwise, is being provided for the case; therefore, the City will have responsibility for any and all settlements, and/or judgments in this matter.

Causes of Action

- Discrimination
- •Disability-based disparate treatment
 - Failure to reasonably accommodate
 - Retaliation

PROVING THE CASE

- a qualified individual with a disability;
- was excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the entity; and
- that this exclusion, denial of benefits, or other discrimination, was by reason of the disability.
- to establish a violation under the Rehabilitation Act: the public entity at issue must be receiving Federal financial assistance.

RETALIATION

- engaged in a statutorily protected activity;
- an adverse action was taken against him; and
- a causal connection exists between the adverse action and the protected activity

Arkansas Civil Rights Act Ark. Code Ann. § 16-123-108

- (a) The right of an otherwise qualified person to be free from discrimination because of race, religion, national origin, gender, **or the presence of any sensory, mental, or physical disability** is recognized as and declared to be a civil right. This right shall include, but not be limited to:
 - (1) The right to obtain and hold employment without discrimination;
 - (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;
 - (3) The right to engage in property transactions without discrimination;
 - (4) The right to engage in credit and other contractual transactions without discrimination; and
 - (5) The right to vote and participate fully in the political process.
- (b) Any person who is injured by an intentional act of discrimination in violation of subdivisions (a)(2)-(5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and a reasonable attorney's fee.

Ark. Code Ann. § 16-123-102

Disability means a physical or mental impairment that substantially limits a major life function, but "disability" does not include:

- (A) Compulsive gambling, kleptomania, or pyromania;
- (B) Current use of illegal drugs or psychoactive substance use disorders resulting from illegal use of drugs; or
- (C) Alcoholism;

Employer means a person who employs nine (9) or more employees in the State of Arkansas in each of twenty (20) or more calendar weeks in the current or preceding calendar year;

DEFENSES

- fundamentally alter the nature and function of the business or services;
- impose an undue financial and administrative burden;
- not readily achievable;
- not technically feasible;
- historical significance;
- jeopardizes safety / creates safety hazards;
- standing;
- Federal and Arkansas Rule of Civil Procure 8;
- "Plaintiff's claims are barred to the extent he is a vexatious litigant." THIS IS NOT A THING!





Jensen v. City

2016/2017 CHRIS JENSEN v. . . .

Coulson Prop. Lmt. P'ship	09.15.15-05.02.16	230 days	Wright, Lindsey & Jennings, settled,
Furniture Factory Outlet	09.15.15-02.03.16	141 days	Littler Mendelson, P.C., settled
City of Sherwood	09.15.15 - 07.21.17	675 days	Yours truly, settled
Hangar Club	11.20.15-10.18.16	333 days	Baxter, Jewell & Dobson, P.A., settled
Barney's Barn Inc.	11.20.15 - 02.15.17	453 days	Alexander Law Firm, settled
SBA Props LLC et al	03.03.16-09.20.16	201 days	Gill Ragon Owen P.A., settled
John Toland Co.	03.03.16-03.09.17	371 days	Catlett Law Firm, settled
US Depot LLC	03.03.16-02.03.17	337 days	Mitchell, Williams, settled
J & P Bike Shop Inc.	05.23.16 - 08.09.17	443 days	Baxter, Jewell & Dobson, P.A., settled
Maychek Properties LLC	05.23.16-11.14.16	175 days	Hankins Law Firm, settled
FRIS CHKN LLC	11.16.16-04.10.17	145 days	Rainwater, Holt & Sexton P.A., settled
Apple Vali Crest NWA LLC	11.16.16-	574 days	Quattlebaum, Grooms, & Tull, settled
TDT-Sherwood LLC	11.16.16-07.13.17	604 days	Friday, Eldredge, Clark, settled

2009/2010 CHRIS JENSEN v. . . .

Community Baker Inc.	05.05.09-10.14.09	Eichenbaum Liles P.A., settled
Hidden Treasures Antiques	05.05.09-03.08.10	Davidson Law Firm, settled
Kiehl Ave. Assoc. et al	05.05.09-03.12.10	Chisenhall, Nestrud & Julian, PA & Watts, Donovan & Tilley, settled
Playtime Partnership LLC	05.05.09-03.29.10	Quattlebaum, Grooms & Tull PLLC, settled
Daughtery & Daughtery Med. Clinic PA	05.05.09-03.23.10	Alexander Law Firm, settled
Kohl's Dept. Stores, Inc. et al	05.12.09-03.23.10	Quattlebaum, settled
Eagle Bank & Trust Co.	05.12.09-12.01.09	Quattlebaum, settled
Dillards Inc.	05.12.09-08.24.09	Williams and Anderson, settled
Spencer Gifts LLC et al	05.12.09-08.26.09	Williams and Anderson, settled
Dolgencorp LLC	05.12.09-01.06.10	Friday Firm, settled
Hwy 107 Antique Mall	05.12.09-03.08.10	Chisenhall, Nestrud & Julian, PA, settled
JC Penney Corp.	05.12.09-09.23.09	Wright Lindsey and Williams & Anderson, settled
Gamestop Inc.	05.12.09-10.16.09	Wright Lindsey and Williams & Anderson, settled
IHOP Props. LLC	02.16.10-08.02.10	Fisher & Phillips, Chicago Firm, settled
Casa De Cinco Inc.	02.16.10-07.20.10	Hankins Law Firm, P.A. & Singleton Law Firm, settled
Kirkland's Stores Inc.	02.16.10-07.01.10	Wright Lindsey, settled
Cactus Jack's Mex. Rest. Inc.	02.16.10-07.08.10	Danny Crabtree, settled
Blockbuster Inc.	02.16.10-08.18.10	Glankler Brown PLLC (TN firm) & Barrett & Deacon (J'boro), settled
Movie Gallery US Inc.	02.16.10-06.04.10	Hankins Law Firm, settled
Hot Topic Inc.	02.18.10-11.15.10	Lawyers Against Lawsuit Abuse, APC (CA firm), settled
Buckle Inc.	02.18.10-08.25.10	Jackson Lewis P.C. (GA firm), settled
Sakura Rest. LLC	04.07.10-09.1710	Gibson and Gibson, Hankins Law Firm, settled

Count I

9. Defendant was required to have completed structural changes in its facilities, over a decade ago, and, in any event, no later than January 26, 1995. 28 C.F.R. § 35.150(c). Defendant has failed to complete the required structural changes to its facilities to provide equal program access to individuals with disabilities.

18. In addition to not providing equal access to the programs and services offered and operated by Sherwood, Sherwood is in violation of 42 U.S.C. § 12101 et seq. and 28 C.F.R. § 36.302 et seq. and is discriminating against the Plaintiff due to the following violations, inter alia:

Sherwood Animal Shelter

- (i) There is no access aisle for the accessible parking space necessary for a wheelchair user to enter or exit his vehicle;
- (ii) The slope of the accessible parking space is too great;

Delmont Park

- (iii) There is no accessible parking;
- (iv) There are no accessible routes to any of the amenities of the site, including the pavilion, picnic tables, and children's playground equipment;
- (v) There is no accessible picnic table;

Sherwood Recreational Center



Ashley v. City

CM/ECF - ARED - LIVE-Query : Case Search Page 1 of 5

Select A Case

Jimmy Ashley is a plaintiff in 49 cases.

3:08-cy-00020- JMM	Ashley v, Fowler Foods Incorporated	filed 02/11/08	closed 10/09/08	
3:08-cv-00021- BSM	Ashley v. Le Bon Temps Roule LLC	filed 02/11/08	closed 12/12/08	
3:08-ov-00022- JMM	Ashley v. Viking Capital LLC	filed 02/11/08	closed 12/04/08	
3:08-cv-00023- BSM	Ashley v. South Haven Seafood Inc	filed 02/11/08	closed 05/20/08	
3:09-cv-00159- SWW	Ashley v. J and S Blair Properties LLC	filed 09/11/09	closed 08/03/10	
3:09-cv-00191- BSM	Ashley v. Phillips Investments & Construction Inc	filed 11/02/09	closed 03/11/11	
3:10-ev-00063- BSM	Ashloy v. Haas et al	filed 04/05/10	closed 04/18/11	
3:10-cv-00258- <u>SWW</u>	Ashley v, Tramontana Group I LLC	filed 10/25/10	closed 09/09/11	
3:10-cv-00259- BRW	Ashley v. Slinkard	filed 10/25/10	closed 03/04/13	
3:11-cv-00027- SWW	Ashley v. Doug Brandon Properties Inc	filed 02/03/11	closed 02/14/13	
3:11-cv-00028- BRW	Ashley v. St Bernard's Hospital Inc	filed 02/03/11	closed 07/24/12	

https://ecf.ared.uscourts.gov/cgi-bin/iquery.pl?574644104438046-L_1_1-0-874855-pty-pla... 3/13/2019

				JLH	
				3:12-cv-00304- DPM	Ashley v
				3:12-ev-00305- SWW	Ashley v
				3:13-cv-00103- ILH	Ashley v
				3:13-ev-00104- KGB	Ashley v
				3:13-ev-00148- JLH	Ashley v
				3:14-cv-00219-1M	Ashley v
				3:14-cv-00279- <u>DPM</u>	Ashley v
				3;15-cv-00112- BSM	Ashley v
ADGE ADDE	THE Course Cours Seconds		Page 2 of 5	3:16-cv-00320- DPM	Ashley v.
:11-cv-00171-	LIVE-Query : Case Search Ashley v. JA Whitley Investments LLC	filed 08/25/11	closed 01/04/12	3:16-ev-00321- JLH	Ashley v.
:12-cv-00026-	Ashley v. BRM Foods Inc	filed 01/30/12	closed 07/24/12	3:16-ov-00322- DPM	Ashley v.
<u>SM</u> :12-cv-00042-				3:16-ev-00336- JLH	Ashley v.
MM	Ashley v. Paragould Arkansas, City of	filed 02/09/12	plosed 01/28/13		
:12-cy-00253- LH	Ashley v. HJE LLC	filed 11/07/12	closed 07/30/13	https://ccf.ared.uscou	rts.gov/cgi-
:12-cv-00269- LH	Ashley v. Taco Bell of America LLC	filed 11/26/12	closed 09/30/13		
:12-cv-00270-	Ashley v. Free Community Inc	filed 11/26/12	closed 12/16/13		
3:12-cv-00271- DPM	Ashley v. Asia Cuisine Paragould Inc	filed 11/26/12	closed 08/28/13		
3:12-cv-00272- SWW	Ashley v. Pizza Inn Inc	filed 11/26/12	closed 04/18/13		
3:12-cv-00274- KGB	Ashley v. Western Sizzlin of Mountain Home LLC	filed 11/26/12	closed 11/20/13		
3:12-ev-00285- JLH	Ashley v. Colico Inc	filed 12/04/12	closed 03/05/13		
3:12-cy-00286- BSM	Ashley v. Hardee's Food Systems Inc	filed 12/04/12	closed 04/04/13		
3:12-cv-00287- SWW	Ashley v. 2810 Highland Investment Company Inc	filed 12/04/12	closed 05/07/14		
3:12-cv-00288-	Ashley v. Liu-Chang LLC	filed 12/04/12	closed 12/17/13		

:12-cv-00304- DPM :12-cv-00305- WW :13-cv-00103- LH :13-cv-00104-	Ashley v. Grecian Steak House of Paragould Inc. Ashley v. Zaharopoulos Properties LLC Ashley v. PAM Inc		closed 05/22/13
:13-cv-00103- LH		filed 12/12/12	
LH :13-ev-00104-	Achley v. DAM Inc.		closed 04/05/13
13-cv-00104-	Asiney V. I And the	filed 04/15/13	closed 03/21/14
GB.	Ashley v. Casa Brava Inc	filed 04/15/13	closed 04/25/14
:13-cy-00148- LH	Ashley v. Project Awareness Inc	filed 06/03/13	closed 08/08/13
:14-cv-00219-JM	Ashley v. Buffalo Wild Wings of Jonesboro Inc.	filed 09/19/14	closed 04/29/15
14-cv-00279- PM	Ashley v. Jonesboro Arkansas, City of	filed 11/28/14	closed 11/06/15
15-cv-00112- SM	Ashley v. Mississippi County	filed 04/27/15	closed 03/15/16
16-cv-00320- PM	Ashley v. Papitos Loco Mexican Restaurant Inc	filed 11/03/16	closed 05/09/17
16-cv-00321- LH	Ashley v. OTB Acquisition LLC	filed 11/03/16	closed 03/30/17
	Ashley v. Property Ventures LLC	filed 11/03/16	closed 08/03/17
	Ashley v. Jonesboro CHR Campus Crest LLC	filed 12/02/16	closed 04/02/18
<u>a.</u>		filed 12/02/16	closed 04/02/18

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03/13/2019 11:23:48



Martin v. City

Service Animals

The one absolutely unselfish friend that man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is his dog.... He will kiss the hand that has no food to offer; he will lick the wounds and sores that come in encounter with the roughness of the world.... When all other friends desert, he remains.

—George G. Vest, "Vest's Eulogy to the Dog"

SERVICE ANIMAL DEFINED

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Ask and Ye Shall Receive

- May ask only two specific questions:
 - (1) is the dog a service animal required because of a disability?
 - (2) what work or task has the dog been trained to perform?





Canady v. City

ALLEGATIONS

Case 2:18-cv-00099-JM Document 1 Filed 07/12/18 Page 1 of 15

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS EASTERN DIVISION

EASTERN DISTRICT ANKAISAS

JUL 1 2 2018

JAMES IN MICORMACK, CLER

BY: SAA JAMES IN

ELAINE CANADY,

Plaintiff,

CASE NO: 2:18 0499-JM

VS.

CITY OF HELENA, ARKANSAS.

Defendant.

COMPLAINT

Plaintiff, ELAINE CANADY ("Plaintiff"), through undersigned counsel, hereby files this Complaint and sues the CITY OF HELENA, Arkansas, a public entity, for injunctive relief, attorney's fees and costs pursuant to 42 U.S.C. §12101 et seq., ("Americans with Disabilities Act" or "ADA") and 29 U.S.C. § 794 et seq. (Section 504 of the Rehabilitation Act) and alleges:

JURISDICTION AND PARTIES

This is an action for declaratory and injunctive relief pursuant to Title Π
of the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., (hereinafter referred
to as the "ADA") and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.
 This Court is vested with original jurisdiction under 28 U.S.C §§1331 and 1343.

1 This case assigned to District Judge Moody and to Magistrate Judge Houris

Case 2:18-cv-00099-JM Document 1 Filed 07/12/18 Page 6 of 15

- 17. The Plaintiff has been unable to and continues to be unable to enjoy full, safe and equal access to the benefits of the programs, services and facilities owned, operated and/or leased by HELENA.
- 18. In addition to not providing equal access to the programs and services offered and operated by HELENA, HELENA is in violation of 42 U.S.C. § 12101 et seq. and 28 C.F.R. § 36.302 et seq. and is discriminating against the Plaintiff due to the following violations, inter alia:
 - (i) King Biscuit Blues Festival Accessible Parking- the area designated for accessible parking at the corner of Walnut Street and Missouri Street is comprised of broken concrete and site debris, is uneven and has changes in level greater than ½ inch with many places having changes in level greater than 2 inches. There are no designated accessible parking spaces, access aisles or accessible signage;
 - (ii) King Biscuit Blues Festival Accessible Seating—the area routinely designated for wheelchair accessible viewing of concerts is too small to accommodate the number of wheelchair users who routinely attend, contains obstructed sight lines and does not allow for adequate dispersion of accessible viewing

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areas among multiple sight lines;

- (iii) King Biscuit Blues Festival—at least one of the portable toilets provided at each group of portable toilets have not been wheelchair accessible and, if wheelchair accessible portable toilets have been provided in the past, no directional signage alerting people with disabilities to their location has been provided:
- (iv) Cherry Street and Missouri Street- On the pavilion side of Cherry Street the curb ramp has flared sides that are too steep. At the foot of the curb ramp the concrete is broken with a change in level greater than ½ inch.
- (v) There are an insufficient number of on street accessible parking spaces within the downtown central business district.
- (vi) Cherry Street between Missouri Street and the Delta Cultural
 Center there is an on street accessible parking space that has no access asse and no accessible signage;
- (vii) Cherry Street at the Delta Cultural Center- the signage at the two accessible diagonal parking spaces is mounted too low and the curb ramp is located in the access aisle such that no level

6



Law Enforcement

Bishop v. City

- Anthony Carter arrested the Plaintiff, and Andrew Rogers refused to transport him in an accessible van.
- 5. Carter arrested Plaintiff, and Rogers pulled him through the car, and used such excessive force that is caused Plaintiff serious injury. Indeed, Plaintiff's back was fractured. Accordingly, as a result of the Defendant's failure to transport Plaintiff in an accessible manner, Plaintiff has been injured, has lost bone density, and will incur other damages in an amount to be proven at trial.

COUNTI

- Plaintiff realleges foregoing as if fully set out herein.
- Plaintiff is a qualified individual with a disability.
- 8. Plaintiff regularly travels to Batesville.
- 9. During his travels, Plaintiff has encountered barriers in the city facilities, including inaccessible sidewalks, toilets, and parking spots. Defendants have failed to make their program and facilities accessible to Plaintiff in violation of Section 504, the Arkansas Civil Rights Act, and the ADA. This failure constitutes illegal disability discrimination.
- 10. By virtue of the facts alleged herein, Plaintiff has incurred medical expenses, and incurred other damages in an amount to be proven at trial.
- Defendant's actions have been so egregious so as to warrant the imposition of punitive damages.

COUNT II

- 12. Plaintiff realleges the foregoing as if fully set out herein.
- 13. The City has failed to trains its officers in the proper way to arrest individuals with disabilities.
- 14. As a result of the failure to train, Defendants have used excessive force in violation of the 4th Amendment and denied Plaintiff due process.



What Do They Want?

incorporated herein by reference, as if fully set forth again herein.

28. Upon information and belief, there are other current violations of the Rehabilitation Act at the facilities and only once a full inspection is performed by Plaintiff or Plaintiff's representatives can all said violations be identified.

WHEREFORE, the Plaintiff demands judgment against Defendant and requests the following injunctive and declaratory relief:

- A That this Court accept jurisdiction of this case and declare that the programs, services and Facility owned, operated and administered by Defendant are discriminatory and are violative of the Rehabilitation Act;
- B. That the Court enter an order requiring Defendant to alter its programs, services and Facility to comply with federal law and regulations to make them accessible to and usable by individuals with disabilities to the extent required by the Rehabilitation Act;
- C. That the Court enter an order directing Defendant to evaluate and neutralize its policies, practices, and procedures toward individuals with disabilities, for such reasonable time so as to allow Defendant to undertake and complete corrective procedures:
- D. That the Court enter an order mandating that Defendant undertake a self-evaluation and that such evaluation contain a description of all of Defendant's programs, services and Facility; a review of all policies and practices that govern the administration of such programs, services and Facility; and an analysis of whether the policies and practices regarding such administration adversely affect the full participation of and use by individuals with disabilities;
- E. That the Court enter an order mandating Defendant to expeditiously make all reasonable and appropriate modifications in its policies, practices and procedures, provide effective signage, remove all architectural barriers

all reasonable and appropriate modifications in its policies, practices and procedures, provide effective signage, remove all architectural barriers that would not cause an undue financial or administrative burden or cause a fundamental alteration to the program or activity, provide alternative means when necessary; and, otherwise, take all such steps as are reasonable and necessary to ensure that persons with disabilities are no longer excluded, denied services, segregated or otherwise treated differently and discriminated against at the Arkansas State University;

- F. Awarding reasonable attorney fees, expert fees, costs, and expenses to the Plaintiff;
- G. Retaining jurisdiction of this case until Defendant has fully complied with the orders of this Court and awarding such other, further or different relief, as the Court deems necessary, just and proper.

Dated this 10 day of September 2015.

Respectfully submitted.

Edward I. Zwilling, Esq. Ala. Bar No. ASB-1564-L54E

OF COUNSEL:

Schwartz Roller & Zwilling, LLP 600 Vestavia Parkway, Suite 251 Birmingham, Alabama 35216 Telephone: (205) 822-2701

Facsimile: (205) 822-2702 Email: ezwilling@szalaw.com with disabilities to the extent required by the ADA, and closing the subject programs, services and facilities until the requisite modifications are completed.

WHEREFORE, the Plaintiff demands judgment against HELENA and requests the following injunctive and declaratory relief:

- That the Court declare that the programs, services and facilities owned, operated and administered by HELENA, are violative of the ADA;
- B. That the Court enter an Order directing HELENA to alter its programs, services and facilities to make them accessible to and useable by individuals with disabilities to the full extent required by Title II of the ADA;
- C. That the Court enter an Order directing HELENA to evaluate and neutralize its policies and procedures towards persons with disabilities for such reasonable time so as to allow HELENA to undertake and complete corrective procedures;
- That the Court award reasonable attorney's fees, costs (including expert fees) and other expenses of suit, to the Plaintiff; and
- E. That the Court award such other and further relief as it deems necessary, just and proper.

COUNT II - VIOLATION OF THE REHABILITATION ACT

- 22. Plaintiffs re-allege and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 21 of this Complaint.
 - 23. As more fully described above, Plaintiff is an individual with a

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STFRANCISCIRCUITCLEK

PAGE 05/08

20. As a direct and proximate cause of the Defendants' acts and omissions alleged herein, Plaintiff has incurred costs, fees, inconvenience, and emotional distress.

WHEREFORE, Plaintiff prays for appropriate compensatory and punitive damages, for reasonable attorney's fees, for costs, for an injunction requiring the Defendants to comply with State and Federal law related to access to persons with disabilities, and all other proper relief to which she may be entitled.

> Respectfully submitted, Larry Martin, Sr.

AUSTIN LAW FIRM, PLLC

LaTonya Laird Austin ABN 2002102

P.O. Box 6466

Sherwood, AR 72124-6466

Phone 501-541-0599

Fax 501-834-2022 austinlaw@hotmail.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, LaTonya Laird Austin, certify tha	t a true and correct	copy of the foregoing document
has been served on the following, this	day of	2016,
addressed to:		

Mayor Larry S. Bryant 224 N. Russer Forrest City, AR 72335

St. Francis County Judge Gary Hughes 313 S. Izard Street Forrest City, AR 72335

Officer William Sparkmon 615 E. Cross Forrest City, AR 72335

Case 1:13-cv-00097-JLH Document 1 Filed 10/29/13 Page 3 of 3

By virtue of the facts alleged herein, Plaintiff has incurred medical expenses, and incurred other damages in an amount to be proven at trial.

Defendant's actions have been so egregious so to warrant the imposition of punitive damages.

WHEREFORE Plaintiff prays for appropriate compensatory and punitive damages exceeding \$75,000.00, for a trial by jury, for reasonable attorney's fees, for costs, for appropriate injunctive relief, prejudgment interest, for reasonable attorneys' fees, and for all other proper relief.

Respectfully submitted,

SUTTER & GILLHAM, P.L.L.C. Attorneys at Law P.O. Box 2012 Benton, AR 72018 501-315-1910 Office 501-315-1916 Facsimile

Attorney for the Plaintiff

Luther Oneal Sutter, AR Bar No. 95031 luthersutter.law@gmail.com

g:\doc\Bishop, Ernest Timothy\PLD\2013-10-28 COM - Bishop, Ernest Timothy.doc

COMMUNICATION

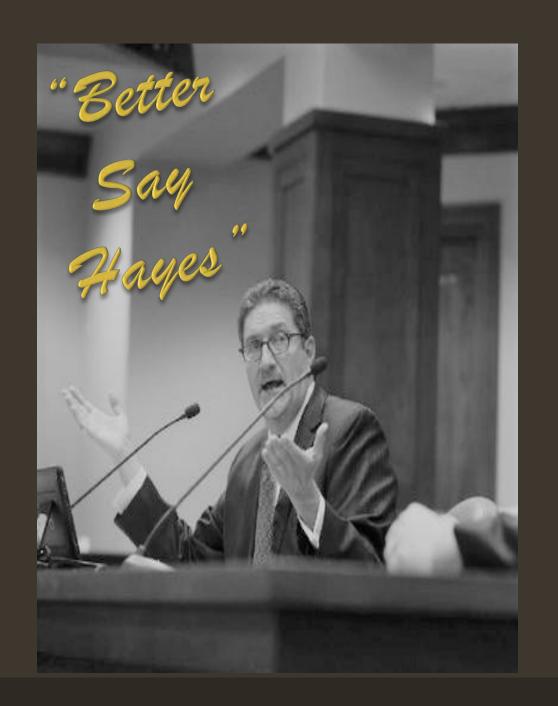
- Speech impairment
- Vision impairment
- Hearing impairment
 - Interpreters
 - Assistive listening devices
 - TTY or TDDs
 - Open and closed captioning
 - Communication boards
- Sending out bills (utilities & taxes)

- Braille materials
- Taking payments
- Applying for permits
- Citations
- City council meetings
- Street lights
- Clicks v. Bricks: Online and website services

WHAT DO WE DO?!?!?!



A C \mathbf{T} U A \mathbf{L} \mathbf{L} Y



Actually...

- Better call
 - Your City Attorney
 - An ADA Expert
 - The League
 - Inquiry
 - <u>lawinquiry@arml.org</u>
 - 501-537-3797, ext. 229
 - Lanny Richmond & David Schoen
 - Litigation
 - John Wilkerson, General Counsel
 - 501-978-6136







RESOURCES

WEBSITES

- <u>WWW.ADA.GOV</u>
- WWW.ADATA.ORG
- WWW.DISABILITYRIGHTSCOURSE.ORG
- WWW.ASKJAN.ORG
- <u>WWW.DOL.GOV</u>
- <u>WWW.YOUTUBE.COM</u>

PUBLICATIONS

- The League Publication
- ADA Title II Regulations

PEOPLE

- ADA Information Line: 800-514-0301
- ADA National Network: 800-949-4232
- Municipal League 501-374-3484
- Evan Terry Associates 205-972-9100
- Tcherneshoff Consulting 256-364-2024

ENGAGING IN THE INTERACTIVE PROCESS OF TITLE I (HUMAN RESOURCES' ROLE)

Tracey L. Cline-Pew, SPHR, SHRM-SCP

Director of Human Resources

Arkansas Municipal League

501-978-6111 / tpew@arml.org

ADA, FMLA & WORKERS' COMPENSATION

- A city's Human Resources professional must know and understand all laws that apply to an accommodation situation.
- HR is responsible for posting required disability anti-discrimination notices. The poster can be found at https://wwl.eeoc.gov/employers/poster.cfm and is usually part of multi-faceted federal law posters.
- HR must be aware that the ADA, the Family and Medical Leave Act (FMLA) and workers' compensation laws may intersect.

Example: An street department employee injures his back at work requiring back surgery. Workers' Compensation covers the injury and lost time. Depending on your policy, the time off work for the serious injury can run concurrently with FMLA leave. When the employee returns to work, he requests an accommodation because he is unable to lift heavy objects or sit for long periods of time. The accommodation request falls under the ADA...

JOB DESCRIPTIONS

One of the most important roles that HR plays in the ADA process is developing comprehensive job descriptions that define the essential functions of a job. Job descriptions should be developed through a thorough job analysis.



An adequate job
description lays the
foundation of not only
the knowledge, skills and
abilities that are required
to perform a job, but also
the physical and mental
attributes that are
needed.



A detailed job description will lend guidance to the accommodations that can be made to accomplish the essential functions of a job.

DEVELOPING ADA ACCOMMODATION POLICIES AND PROCEDURES

 HR should be involved in developing and maintaining ADA accommodation policies and procedures. Whenever possible, legal counsel should be included in this process.



HOW IS AN ADA ACCOMMODATION REQUEST MADE?

The employee can make the request.

An employee's representative can make the request.

In some circumstances, the need for an accommodation may become obvious to an employer.

The request can be made in writing or verbally and does not have to specifically refer to the ADA.

Example 1: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

Example 2: An employee asks for a new chair because his is uncomfortable. While this is a request for a change at work, the statement is insufficient to put the employer on notice that a reasonable accommodation has been requested. The need for a chair is not linked to a medical condition.



ASCERTAINING
AN EMPLOYEE
AND EMPLOYER'S
LEGAL RIGHTS
AND
RESPONSIBILITIES

- The employer must determine whether the employee's condition qualifies as a protected disability under the ADA.
 Under the ADA, you have a disability if you have a physical or mental impairment that substantially limits a major life activity.
- The ADA emphasizes that the definition of "disability" should be construed in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA.
- Examples of medical conditions that would be considered a disability includes: deafness, blindness, diabetes, cancer, epilepsy, mobility impairments, intellectual disabilities, autism, bipolar disorder, PTSD, schizophrenia, etc.
- The term impairment does NOT include the following: compulsive gambling, kleptomania, pyromania, transvestism, exhibitionism, pedophilia, gender identity disorders, psychoactive substance use disorders resulting from current illegal use of drugs, etc.

MAINTAINING AN INTERACTIVE DIALOG BETWEEN ALL PARTIES



It is the employer's responsibility to engage in an interactive process with the employee, and in some cases with health care professionals, to determine whether an employee can perform the essential functions of a job with or without a reasonable accommodation.



Be prepared for conflicts of interest when the employer prefers one accommodation and the employee prefers another. In this situation, communication is key.



When the disability or the need for an accommodation is not obvious, the employer may ask the employee to provide medical documentation about the disability and functional limitations – but the scope of the request should be limited and pertain only to the disability and need for an accommodation.



Failure by an employer to participate in an open dialog with an employee after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation. The burden is on the employer to comply with the law.

DETERMINING WHETHER AN ACCOMMODATION IS REASONABLE

- An employer must determine whether an accommodation is reasonable.
 Some solutions are simple and inexpensive such as raising a desk to a height that will accommodate a wheelchair. However some may create an undue hardship.
- Undue hardship not only refers to a <u>financial</u> hardship, but also on how extensive or disruptive an accommodation might be.
- An employer must also consider the health and safety of other employees, customers or the public.
- Assessments should be made on a case-by-case basis.

MONITORING AND DOCUMENTING THE ADA PROCESS



The entire process outlined in this presentation should be continually monitored to ensure that the accommodation is effective. At times, adjustments may be needed.



HR should maintain accurate records of the entire process. The documentation should be kept in a confidential file as the records contain protected health information.



What are the requirements of a state or local government to be compliant with the ADA?

PRESENTED BY KIRK TCHERNESHOFF MARCH 14, 2019

In a nutshell, state and local government entities must make all of their programs and facilities usable and accessible to people with disabilities so that they may participate in the same manner as people who are not disabled. Below I have outlined the specific requirements for ensuring program access as well as some examples of program access.

What are examples of program access?

- Providing accessible parking spaces in a city park where all other parking spaces are grass
- Relocating the city council chambers from an inaccessible building to an accessible one
- Providing compliant accessible playground equipment
- Providing materials in alternative formats
- Providing interpreters for the deaf
- Providing accessible websites
- Making changes in policies and procedures that may otherwise prevent someone who is disabled from participating in a particular program
- Providing lifts or ramps into swimming pools
- Making dugouts and concession stands accessible
- Ensuring that when contracting with an outside entity to provide services or events that those services or events are accessible to the public
- Evaluate all curb ramps and city sidewalks and develop a plan to remove all barriers to access for people with mobility or visual impairments

Step 1 to ADA Compliance:

Appoint and Train an ADA Coordinator

Step 2 to ADA Compliance:

Develop a Grievance Procedure

Step 3 to ADA Compliance:

Perform a Self-Evaluation

Step 4 to ADA Compliance:

Survey All Facilities and Develop a Transition Plan

Step 5 to ADA Compliance:

Ongoing Staff Training

What can TCI do for your city/county?

- Telephone and e-mail consultations
- Seminar and webinar training on the requirements of the ADA
- Full property inspections which include the existing conditions, digital
 photography to document each barrier discovered and each item in
 compliance, recommendations for barrier removal, and the cost involved to
 remove each barrier to help develop a transition plan
- Working with each municipality to review all programs and services and develop a self-evaluation
- Plan review for new construction or alterations
- Disability awareness training seminars
- Settlement conferences
- Case Review
- Depositions/court appearances
- Website accessibility

THE BARRIER REMOVAL PROCESS

Darren Austin, CPRP
Assistant Director
Sherwood Parks & Recreation





























































































THE BARRIER REMOVAL PROCESS



2019 ADA Workshop Arkansas Municipal League March 14, 2019

Darren Austin, CPRP
Assistant Director
Sherwood Parks & Recreation
Phone: (501) 835-6893

Email: Darren@sherwoodparks.com

Americans with Disabilities Act Title II Compliance Guide

Revised FEBRUARY 2019

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INTRODUCTION

Title II of the Americans with Disabilities Act (ADA) requires cities to provide access to all services, programs, and activities that they offer to people with disabilities. Cities are required to make reasonable modifications in their policies, practices, and procedures to accommodate individuals pursuant to Title II and avoid discrimination. However, cities are not required to make modifications that would result in a fundamental alteration to a program, service, or activity or that would result in a direct threat to the health or safety of others.

This compliance overview should serve as a model for your city to use to comply with the accessibility requirements of the ADA. In addition to your city performing a self-evaluation and transition plan, your city should also commit the financial resources to bring itself into compliance with the ADA and train its employees to be aware of accessibility issues.

Please note that under Title II, cities that employ 50 or more persons were to have developed a transition plan, discussed herein, by July 26, 1992. In addition, all cities were to have completed a self-evaluation, discussed herein, by Jan. 26, 1993. Structural changes needed for program accessibility, also discussed herein, were to have been made no later than Jan. 26, 1995.

If your city has not already complied with these requirements, it should do so immediately. Cities that have already completed a self-evaluation are not required to do another one, although periodic review is a best practice to maintain compliance with the ADA.

This booklet contains samples and forms in the Appendix that will assist in bringing your city into compliance with the accessibility requirements of the ADA. However, these forms are not intended to be a substitute for legal advice. Furthermore, this booklet does not address all matters covered by the ADA. As with all legal matters, municipal officials facing complicated legal issues should consult their city attorneys.

Neither these forms, nor any other single packet of forms, can simplify the legal intricacies of the ADA. A review of the ADA and the federal regulations governing the Act, along with timely and consistent legal advice from your city attorney, will provide the best opportunity to comply with the Act.

ADA COMPLIANCE

ADA compliance begins with the following steps: 1

- 1. If your city has 50 or more employees, it **must** designate an employee as the city's ADA Coordinator. This person or persons will serve as a contact person for the public and will coordinate all ADA responsibilities within the city. The ADA Coordinator should oversee the city's compliance with ADA regulations and investigate complaints or grievances from the public. 28 CFR § 35.107(B).
 - **Appendix A** of this booklet is a sample form that may be used to document and publicize the designation of your city's ADA Coordinator.
- 2. Establish a grievance procedure, such as the sample found in **Appendix B**, for resolving complaints of ADA violations. A grievance procedure must provide for the prompt, equitable resolution of complaints filed by people with disabilities or by someone on the behalf of someone with a disability. 28 CFR § 35.107(B).
- 3. The grievance procedure should include a complaint form, such as the sample found in **Appendix C**, which can be completed and submitted to the city's designated ADA Coordinator. 28 CFR § 35.160(b)(2).
- 4. Publish the required public notice, and do so in alternate formats (e.g. large print, braille, or audio format) and make it accessible electronically (e.g. via email or in HTML format on your city's website). The notice should identify your city's ADA Coordinator and methods to contact them. The notice should also state that your city has a policy of not discriminating against individuals with disabilities and that it has adopted a grievance procedure that can be initiated by contacting the ADA Coordinator. 28 CFR § 35.106. A sample Public Notice may be found at **Appendix D** to this booklet.
- 5. Give notice to your community that the city intends to conduct a self-evaluation of its policies, procedures, and services. The notice may be placed in the local newspaper or, if no newspaper is available, on local bulletin boards at city hall, the post office, etc.
 - Your city is required to accept comments from the public on its self-evaluation and is strongly encouraged to consult with individuals with disabilities and organizations that represent them to assist in the self-evaluation process. 28 CFR § 35.105.
- 6. Conduct a **self-evaluation** of the city's policies, procedures, and facilities.
 - A self-evaluation is a procedure in which the city evaluates its buildings, services, policies, and practices and tries to make sure that they are reasonably accessible to all individuals, in compliance with the requirements of the ADA. Results of the self-evaluation should be retained for three (3) years. 28 CFR § 35.105.

During the self-evaluation, your city should identify all of its programs, activities, and services, and review all the policies and practices that apply to the administration of the city's programs, activities, and services.

Your city is not required to hold a public hearing concerning the self-evaluation, but it is required to accept comments from the public on the self-evaluation. In addition, you are strongly encouraged to consult with individuals with disabilities and organizations that represent them to assist in the self-evaluation process.

During the self-evaluation, your city should determine whether any of its policies and practices affect the full participation of individuals with disabilities in city programs, activities, and services.

Some issues to consider include:

a. Whether any physical barriers to access exist. If structural changes are necessary, include them in the transition plan. 28 CFR §35.150(d)(3)(i).

¹ While this booklet addresses ADA requirements for municipalities in terms of a mayor-council form of government, the procedures and examples set forth within this booklet may be easily modified for a municipality that is a city manager-board of directors form of government.

- b. Whether any practices or policies exclude or limit the participation of individuals with disabilities in municipal programs, activities, or services. If so, such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. Identify policy modifications to be implemented and state the justifications for any exclusionary or limiting policies or practices that will not be modified. 28 CFR §35.130(b)(7)(i).
- c. Whether the city communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others, making available appropriate auxiliary aids and services where necessary to ensure effective communication. 28 CFR §35.106.
- d. Whether procedures have been established to evacuate individuals with disabilities during an emergency.
- e. Whether municipally operated historic preservation programs give priority to methods that provide physical access to individuals with disabilities. 28 CFR §35.150(B)(3).
- f. Whether decisions concerning a fundamental alteration of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by Title II, are made properly and expeditiously. While a city does not have to take any action that would result in a fundamental alteration in the nature of its program or activity or an undue financial or administrative burden, such a determination can only be made by the head of the city or their designee and must be accompanied by a written statement of the reasons for reaching that conclusion. This determination must be based on all resources available for use in the program in question. Even if such a determination is made, the city must take any other action that would not result in such alterations or burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or service. 28 CFR §35.150(a)(3).
- g. Whether individuals with mobility impairments are provided access to public meetings. 28 CFR \$35.150(a)(1).
- h. Whether construction of each new municipal facility or part of a facility, or the alteration of existing facilities after Jan. 26, 1992, conforms to the standards designated under the Title II regulation. 28 CFR \$35.151.
- i. Whether measures have been taken to ensure that city employees are familiar with the policies and practices for the full participation of individuals with disabilities. 28 CFR §35.106.

If your city has identified policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, it must take immediate action to eliminate the impediments to full and equivalent participation.

- Guidelines that may be used for purposes of performing a self-evaluation are found in Appendix E of this booklet.
- 7. Develop and adopt a transition plan if changes are needed to achieve accessibility. Appropriate money to put the plan into effect and complete the tasks outlined in the plan. A transition plan should be utilized to resolve any issues identified in the self-evaluation.

At a minimum, your city's transition plan should contain:

a. A list of the physical barriers in a public entity's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;

- b. A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible;
- c. The schedule for taking the necessary steps to achieve compliance with Title II (if the time period for achieving compliance is longer than one year, the plan should identify the interim steps that will be taken during each year of the transition period); and
- d. The name of the official responsible for the plan's implementation.
- A copy of your city's transition plan should be made available for public inspection.
- A sample self-evaluation and transition plan is found at Appendix F of this booklet.
- 8. Your city must provide the public with information that explains Title II's applicability to its services, programs, or activities and apprises individuals of Title II's prohibitions against discrimination.
 - This information can be provided in several ways: handbooks, manuals, and pamphlets that are distributed or made available to the public; the display of informative posters in public places; or by television or radio broadcast. In providing this information, your city must comply with the Title II requirements for effective communication, including alternate formats, if appropriate.
- 9. A public entity has the burden of proving that compliance with program accessibility would result in a fundamental alteration in the nature of the program or in an undue financial and administrative burden.
 - The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.
 - If compliance with program accessibility would result in a fundamental alteration in the nature of the program or in an undue financial and administrative burden, a public entity shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

ADDITIONAL RESOURCES

The ADA Information Line is a service provided by the Department of Justice. This toll-free phone number provides access to ADA specialists during business hours and access to on-demand assistance materials 24 hours a day. Department of Justice publications can also be ordered through the Line 24 hours a day through the Information's Line's voicemail system.

ADA Information Lines: Voice: 800-514-0301; TTY: 800-514-0383

Another valuable resource is the Department of Justice's ADA Home Page on the Internet. This web site provides access to ADA regulations and assistance materials, including newly released assistance material. You can also find links to other federal agencies with ADA responsibilities.

ADA Home Page - www.ada.gov

The ADA and City Governments: Common Problems

A publication that compiles common problems with Title II compliance. www.ada.gov/comprob

ADA Guide for Small Towns

A guide for small local governments, including cities, towns, townships, and rural counties. The publication addresses special concerns of the ADA's requirements for local governments and gives practical examples. www. ada.gov/smtown

Title II Technical Assistance Manual (1993) and Supplements

A manual explaining what state and local governments must do to ensure that their services, programs, and activities are provided to the public in a non-discriminatory manner. www.ada.gov/taman2

Department of Justice ADA Mediation Program

A publication describing the Department's ADA mediation program, including locations of ADA mediators and examples of successful mediation efforts. www.ada.gov/mediation_docs/mediation-program

ADA Information Services

A list with the telephone number and Internet address of federal agencies and other organizations that provide information and technical assistance to the public about the ADA. www.ada.gov/agency

Commonly Asked Question About the ADA and Law Enforcement

A publication explaining ADA requirements for ensuring that people with disabilities receive the same law enforcement services and protections.

www.ada.gov/q&a_law

Access for 9-1-1 and Telephone Emergency Services

A publication explaining the requirements for direct, equal access to 9-1-1 for persons who use teletypewriters (TTY).

www.fcc.gov/general/access-9-1-1-and-telephone-emergency-services

ADA Best Practices Tool Kit for State and Local Governments

A publication designed to teach state and local government officials how to identify and remove barriers that prevent people with disabilities from gaining equal access to state and local government programs, services, and activities. www.ada.gov/pcatoolkit/toolkitmain

Other Helpful Web Resources:

www.adata.org

www.askjan.org

APPENDIX A

ADA COORDINATOR

I,	, Mayor of the City of	, Arkansas, hereby
	, as ADA coordinator for the city	
that as the ADA co	oordinator, he/she will serve as liaison between the city and the	public and is responsible
for posting notices property and service	and grievance procedures and initiating transition plans and s ces.	elf-evaluations for the city's
	also recognizes his/her duty to receive complaints from the	e public and oversee their
investigation.		
Signature of App	pointee	
Signature of May	vor	
Date		

The city should place the name, address, and telephone number of the ADA coordinator on the public notice, an example of which is found at Appendix D, and place it on the city's bulletin board or in a conspicuous place for public viewing.

APPENDIX B

SAMPLE GRIEVANCE PROCEDURE

A. Persons shall be allowed to submit complaints regarding access or other alleged discrimination in writing by completing the ADA Complaint Form, which will be provided to you or to someone on your behalf by request. If the individual submitting the complaint is unable to do so in writing, the complaint may be submitted verbally to the ADA coordinator.

• •		
B. Once completed, the ADA Complaint Form should be g	given to the ADA coordin	ator for resolution
The ADA coordinator for the City of	is:	
(NAME OF ADA COORDINATOR)		
(STREET ADDRESS)		
(CITY-STATE-ZIP CODE)		
(VOICE TELEPHONE)		
(TTY NUMBER)		

C. The ADA coordinator should meet with the complainant and try to provide a decision within fifteen (15) working days of the complaint being filed, not counting the date of the filing itself.

(EMAIL ADDRESS)

- D. If the complaint cannot be resolved to the satisfaction of the complainant by the ADA coordinator, it will be forwarded to the mayor. The mayor will review the complaint, meet with the complainant and try to provide a decision within fifteen (15) working days of the date of the ADA coordinator's decision, not counting the date of the decision. If the mayor is the ADA coordinator, then the complaint should be forwarded directly to the city council.
- E. If the complaint cannot be resolved to the satisfaction of the complainant by the mayor, it will be forwarded to the city council. The city council's decision is the final decision of the city and it should be made within thirty (30) days of the mayor's decision, not counting the day of the decision.
- F. A record of the action taken on each request or complaint will be maintained as part of the records or minutes at each level of the grievance process.

APPENDIX C

CITY OF	, ARKANSAS
AMERICANS WI	TH DISABILITIES COMPLAINT FORM

	e ADA coordinator, if unable to communicate in writing) you roximate time, date, and place of occurrence, as well any city.
What do you think would resolve the proble	em or complaint?
Name:	
Address:	
Telephone:	
Email Address:	
Signature:	
Date:	
Representative Name:	
Representative Signature:	

APPENDIX D

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, the City of will not discriminate against qualified individuals with disabilities on the basis of disability in the provision of the city's services, programs, or activities.
Employment: The City of is an equal opportunity employer and does not discriminate on the basis of disability in its hiring or employment practices. The City of complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA).
Effective Communication: The City of will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the city's programs, services, and activities, including qualified sign language interpreters, documents in braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.
Modifications to Policies and Procedures: The city will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all city programs, services, and activities. For example, individuals with service animals are welcomed in city offices, even where pets are generally prohibited, as long as the animal does not create a legitimate safety risk or fundamentally alter the nature of the city's services.
Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a city program, service, or activity, should contact the office of the ADA coordinator,(name), as soon as possible but no later than 48 hours before the scheduled event.
The ADA does not require the city to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden.
Complaint/Grievance Procedure: Complaints that a city program, service, or activity is not accessible to persons with disabilities should be directed to (name), ADA coordinator, at (voice telephone number) or (TTY telephone number).
Forms on which to file your complaint will be provided or, if necessary, your complaint will be heard verbally. A record of your complaint and the action taken will be maintained in a special complaint file in the ADA coordinator's office. A decision concerning any ADA grievance will be considered by the designated ADA coordinator within days of being filed.
The city will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Self-Evaluation Guidelines:

PARKING

Each parking lot provided for employees or visitors of a city is required to have a minimum number of accessible parking spaces, based on total number of spaces in a given parking lot, as indicated in the chart below:

Column A	Column B	Column C
Total Parking Spaces in Lot	Required Minimum Number of Accessible Spaces	Minimum Number of Van- Accessible Parking Spaces (1 of 6 Accessible Spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1
201 to 300	7	2
301 to 400	8	2
401 to 500	9	2
501 to 1000	2 percent of total	1/6 of Column B
1001 and over	20 plus one for each 100 over 1,000	1/6 of Column B

- Accessible parking spaces must be the closest spaces to the building's accessible entrance.
- Accessible parking spaces must be at least 96 inches wide with a clearly marked adjacent access aisle of 60 inches. (If possible, make the parking space van accessible, as one out of every six accessible parking spaces must be space van accessible. This requires a parking space at least 96 inches wide with an adjacent access aisle of 96 inches and 98 inches vertical clearance.)
- The access aisle must connect directly to the accessible route to the buildings.
- If the accessible route is in front of the parking space, install wheel stops to keep vehicles from reducing the width of the accessible route below 36 inches.
- Spaces and aisles must be level with no slope greater than 1:48.
- All accessible parking spaces must have an unobscured vertical sign that shows the universal symbol of accessibility.

BUILDINGS

Most Arkansas cities have at least one municipal building open to the public, such as city hall. However, your city may have more than one municipal building open to the public—police station, fire station, water works, transportation, waste water, cemetery, city park (with restrooms or concessions), municipal auditorium, or convention center. If your city has more than one public building, then you must fill out a checklist, such as the one presented on the following pages of this booklet, for each one.

			IDIX E
BUILDING ACCESS	YES	NO	IF MODIFICATIONS ARE REQUIRED, STATE THE MODIFICATION AND ESTIMATED DATE OF COMPLETION
Are there any curbs or stairs between the accessible parking space and the building allowing wheelchair access?	YES	NO	If not, the City will remedy this by
Is the accessible route at least three feet wide with a slip-resistant surface?	YES	NO	If not, the City will remedy this by
Is there a ramp into the building with a vertical slope and rise?	YES	NO	If not, the City will remedy this by
Is there a "drop off" zone at the building entrance for disabled persons?	YES	NO	If not, the City will remedy this by
Is the gradient from parking to building entrance 1:12 or less?	YES	NO	If not, the City will remedy this by
Is the entrance doorway at least 36 inches wide?	YES	NO	If not, the City will remedy this by
If no, is there another entrance with a doorway this wide?	YES	NO	
If there are several entrances and only one is accessible, is a sign posted at the inaccessible entrances directing individuals to the accessible entrance?	YES	NO	If not, the City will remedy this by
Is the door handle easy to grasp?	YES	NO	If not, the City will remedy this by
Is the door easy to open (less than 8 lbs. pressure)?	YES	NO	If not, the City will remedy this by
Are other than revolving doors available?	YES	NO	If not, the City will remedy this by

BUILDING CORRIDORS	YES	NO	IF MODIFICATIONS ARE REQUIRED, STATE THE MODIFICATION AND ESTIMATED DATE OF COMPLETION
Is path of travel free of obstruction and wide enough for a wheelchair?	YES	NO	If not, the City will remedy this by
Is floor surface hard and not slippery?	YES	NO	If not, the City will remedy this by
Do obstacles (phones, fountains) protrude more than 4 inches from the wall?	YES	NO	If not, the City will remedy this by
Are elevator buttons, light switches, thermostats, and other controls low enough (48 inches) to be reached from a wheelchair?	YES	NO	If not, the City will remedy this by
Are elevator markings in braille for the blind?	YES	NO	If not, the City will remedy this by
Does elevator provide audible signals for the blind?	YES	NO	If not, the City will remedy this by
Does elevator interior provide a turning area of 51 inches for wheelchair?	YES	NO	If not, the City will remedy this by

RESTROOMS	YES	NO	IF MODIFICATIONS ARE REQUIRED, STATE THE MODIFICATION AND ESTIMATED DATE OF COMPLETION
Are restrooms near building entrance and/or personnel office?	YES	NO	If not, the City will remedy this by
Do doors have lever handles?	YES	NO	If not, the City will remedy this by
Are doors at least 32 inches wide?	YES	NO	If not, the City will remedy this by
Is restroom large enough for wheelchair turnaround (51 inches minimum)? If there are stalls, one stall should be 5-by-5 feet clear of door swing, and arranged so that a wheelchair can back in and position itself directly beside the toilet to allow side transfer.	YES	NO	If not, the City will remedy this by
Are stall doors at least 32 inches wide?	YES	NO	If not, the City will remedy this by
Are the toilet seats between 17 and 19 inches high, and are grab bars provided in toilet stalls?	YES	NO	If not, the City will remedy this by *Note: add-on seats to increase the height are available.
Are sinks at least 30 inches high with room for a wheelchair to roll under?	YES	NO	If not, the City will remedy this by
Are sink handles easily reached and used?	YES	NO	If not, the City will remedy this by *Note: use lever hardware.

RESTROOMS	YES	NO	IF MODIFICATIONS ARE REQUIRED, STATE THE MODIFICATION AND ESTIMATED DATE OF COMPLETION
Are soap dispensers, towels, etc. no more than 48 inches from floor?	YES	NO	If not, the City will remedy this by
Are exposed hot water pipes located under sinks wrapped in insulation to avoid injury to those individuals using a wheelchair?	YES	NO	If not, the City will remedy this by

CITY DEPARTMENTS THAT SERVICE THE GENERAL PUBLIC	YES	NO	IF MODIFICATIONS ARE REQUIRED, STATE THE MODIFICATION AND ESTIMATED DATE OF COMPLETION
Are doors at least 32 inches wide?	YES	NO	If not, the City will remedy this by
Is the door easy to open?	YES	NO	If not, the City will remedy this by
Is the threshold no more than 1/2 inch high?	YES	NO	If not, the City will remedy this by
Is the path of travel between desk, tables, etc. wide enough for wheelchairs?	YES	NO	If not, the City will remedy this by
Do you have a counter that is too high to serve individuals in wheelchairs?	YES	NO	If not, the City will remedy this by *Note: This may be remedied by training your personnel to come out and help the disabled person. Make sure that you document this in training records and have employees sign.

ALTERATIONS TO EXISTING FACILITIES

- When the city chooses to alter any of its facilities, the elements and spaces being altered must comply with the 2010 ADA Standards for Accessible Design ("2010 Standards").
- An "alteration" includes remodeling, renovating, rehabilitating, reconstructing, changing or rearranging structural parts or elements, changing or rearranging plan configuration of wall and full-height or other fixed partitions, or making other changes that affect (or could affect) the usability of the facility. Normal maintenance, reroofing, painting, wallpapering, or other changes that do not affect the usability of a facility are not considered alterations. 28 CFR § 35.151; 2004 ADAAG § 106.5.
- Where strict compliance with the 2010 Standards is "technically infeasible," the city must comply to the maximum extent feasible. "Technically infeasible" is defined as something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modifications or additions that comply fully with the 2010 Standards. Certain alteration exemption exists as well, such as those that would threaten or destroy the historic significance of historic property. 28 CFR § 35.151; 2004 ADAAG § 106.5.

COMMUNICATING WITH PEOPLE WHO HAVE DISABILITIES

- The city must take necessary steps to communicate effectively with people who have disabilities by using appropriate auxiliary aids and services. 28 CFR § 35.160.
- The city is required to give primary consideration to the type of auxiliary aid or service requested by the person with the disability. This choice must be honored, unless another equally effective means of communication is available, or the aid or service requested would fundamentally alter the nature of the program, service, or activity or would result in undue financial and administrative burdens. No matter what, the city must provide an aid or service that provides effective communication, if possible.
- The decision that a particular aid or service would result in an undue burden or a fundamental alteration must be made by a high-level official, accompanied by a written statement of the reasons for reaching that conclusion. 28 CFR § 35.150(a)(3).
- The telecommunications relay service (TRS), reached by calling 7-1-1, is a free nationwide network that uses communications assistants to serve as intermediaries between people who have hearing or speech disabilities who use a text telephone (TTY) or text messaging and people who use standard voice telephones.
- Video relay service (VRS) is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities. The interpreter serves as an intermediary between the subscriber and the person who uses a voice telephone.

CURB RAMPS—NEW CONSTRUCTION OR ALTERATION

- When streets, roads, or highways are newly built or altered, they must have ramps or sloped areas wherever there are curbs or other barriers to entry from a sidewalk or path. Likewise, when new sidewalks or paths are built or are altered, they must contain curb ramps or sloped areas wherever they intersect with streets, roads, or highways. 28 CFR 35.151(i).
- If curb ramps constructed prior to March 15, 2012, already comply with the curb ramp requirements of the 1991 Standards, then they do not need to be modified in accordance with the 2010 Standards, unless they are altered after March 15, 2012.

CURB CUT PLAN

- Identify which streets in the city have sidewalks and whether the sidewalks at the intersections of those streets have been "cut" to allow wheelchair access to cross the streets to other sidewalks or streets.
- If all curbs have not been altered to allow wheelchair access, identify how many curbs (there are four curbs per intersection) need altering within the city.
- Absent special request or circumstances, curbs in the following locations should be given priority, in the order listed below:
 - 1) Hospitals;
 - 2) Schools;
 - 3) Any other public buildings;
 - 4) Business district; and
 - 5) Neighborhoods.

SERVICE ANIMALS

- A service animal is a dog that has been individually trained to do work or perform tasks for an individual with a disability. All breeds of dogs can be service animals, and documentation that the dog is a service animal is not required.
- In situations where it is not obvious that the dog is a service animal, staff may ask only two specific questions: (1) Is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform?
 - Staff are not allowed to request any documentation for the dog, require that the dog demonstrate its task, or inquire about the nature of the person's disability.
- Service animals must be allowed in areas of a facility where the public is allowed except where the dog's presence would create a legitimate safety risk or where the dog's presence would fundamentally alter the nature of a public entity's services.
- The city may exclude service animals only if: (1) The dog is out of control and the handler cannot or does not regain control; or (2) the dog is not housebroken. If the service animal is excluded, then the individual must be allowed to enter the facility without the service animal.

WHEELCHAIRS AND OTHER POWER-DRIVEN MOBILITY DEVICES

- The city must allow people with disabilities to use mobility devices in all areas where members of the public are allowed to go to accommodate them, unless the mobility device used cannot be accommodated because of legitimate safety requirements.
- The city must consider the following factors in determining whether to permit certain power-driven mobility devices on their premises:
 - 1) the type, size, weight, dimensions, and speed of the device;
 - 2) the volume of pedestrian traffic;
 - 3) the facility's design and operation characteristics, such as its square footage, whether it is indoors or outdoors, the placement of stationary equipment, devices, or furniture, and whether it has storage space for the device if requested by the individual;
 - 4) whether legitimate safety standards can be established to permit the safe operation of the device; and
 - 5) whether the use of the device creates a substantial risk of serious harm to the environment or natural or cultural resources or poses a conflict with federal land management laws and regulations.
- The city is encouraged to develop written policies specifying which power-driven mobility devices will be permitted and where and when they can be used.

ACCESSIBLE SWIMMING POOLS

- All state and local government programs, services, and activities, when viewed in their entirety, must be accessible to individuals with disabilities unless doing so results in a fundamental alteration in the nature of the program or in an undue financial and administrative burden. This requirement is known as "program accessibility."
- Program accessibility applies to all pool-related programs, services, and activities (swimming programs).
 Program accessibility does not typically require that every pool be made accessible. However, if a public entity has only one existing pool, it must take steps to ensure that its swimming program at that pool is accessible.
- A public entity determines which method it will use for meeting its program accessibility obligations.
 When structural changes are made to existing pools, including installation of a fixed pool lift, the changes must comply with the 2010 Standards.
- The 2010 Standards establish two categories of pools: large pools with more than 300 linear feet of pool wall and smaller pools with less than 300 linear feet of wall.
- Large pools must have two accessible means of entry, with at least one being a pool lift or a sloped entry.
- Smaller pools are only required to have one accessible means of entry, provided that it is either a pool lift or a sloped entry.
- There are a limited number of exceptions to the requirements. One applies to multiple spas provided in a cluster. A second applies to wave pools, lazy rivers, sand-bottom pools, and other pools that have only one point of entry.
- If a public entity chooses to acquire equipment—for example, a portable lift—to provide program accessibility, the entity should select equipment that includes features required by the 2010 Standards, including independent operation by individuals with disabilities.
- Sharing accessible equipment between pools is not permitted, unless it would result in undue burdens to provide equipment at each one.
- Accessible pool features must be available whenever the facility is open to the public.
- For more information on the specific requirements and exceptions, see sections 242 and 1009 of the 2010 Standards.

SAMPLE SELF-EVALUATION AND TRANSITION PLAN

A self-evaluation is a procedure where the city evaluates its buildings, services, policies, and practices, and
tries to make sure it is accessible to all individuals and in compliance with the requirements of the ADA. A
notice was issued to the public on (Try to provide at least seven days notice)
inviting all interested persons, including those with disabilities and/or groups representing them to attend this walk-through of the city.
This self-evaluation and transition plan was created on, as a result of an
evaluation of the city's facilities by the following persons:
1)
2)
3)
4)
5)
6)
(If possible, include a disabled person from your community in the self-evaluation process.)
A self-evaluation is a city's assessment of its current policies and practices. The self-evaluation identifie and corrects those policies and practices that are inconsistent with Title II's requirements. As part of the self-evaluation, a city should:
g. Identify all the city's programs, activities and services; and
h. Review all the policies and practices that govern the administration of the city's programs, activities,
and services. Normally, a city's policies and practices are reflected in its laws, ordinances, regulations,
administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom.
The city of has identified its policies and practices. They are as follows:
1)
2)
3)
4)
The city will now analyze whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities, and services. In this regard, the city is mindful that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services. Areas that need careful examination include the following:
1. A public entity must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan.
Do any programs outlined in the previous section need to be examined here?
Yes
No
If yes, list the program and the proposed modifications with dates of completion.
1)
2)
3)
4)

2.	A public entity must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.		
	Are any modifications to policies required?		
	Yes		
	No		
	If yes, list here.		
	1)		
	2)		
	3)		
_	4)		
3.	A public entity should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If a public entity communicates with applicants and beneficiaries by telephone, it should ensure that Tele-Typewriter telephones (TTYs) or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if a public entity provides telephone emergency services, it should review its policies to ensure direct access to individuals who use TTYs and computer modems.		
	Does your city communicate with applicants by telephone?		
	Yes		
	No		
	If yes, have arrangements been made to ensure that TTYs or equally effective telecommunication systems are incorporated?		
	Yes		
	No		
	Not applicable		
	Does your city offer telephone emergency services?		
	Yes		
	No		
	If yes, state what policies have been put into effect to ensure access to disabled individuals.		

4.	A public entity should review its policies to ensure that they include provisions for readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of a public entity's program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities particularly individuals with hearing, visual, and manual impairments. In addition, a public entity should have policies that ensure that its equipment is maintained and in working order.			
	Does your city have visually impaired persons who attend council meetings or other functions?			
	Yes			
	No			
	If yes, or if this occurs in the future, the city will read all handouts aloud at its meeting to ensure access.			
	If there are citizens who need assistance with applying for or paying for other city services, such as utilities provided by the city, the city will meet with that person and assist them by reading the applications and/or bills for service to them.			
5.	A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.			
	The city does/does not (circle one) have visual and audible warning signals. If not, the city agrees to train one person in each of its buildings to assist individuals with disabilities from the facility during a emergency. The persons who are trained to do this for the City of are as follows:			
	1) for building;			
	2) for building;			
	3) for building;			
	4) for building;			
	A review should be conducted of a public entity's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.			
	Done			
	Not Done			
	Signature of person who performed the review			
	Date of review			

6.	gives priority to methods that provide physical access to individuals with disabilities.
	The city does/does not (circle one) operate historic preservation programs. If yes, the ADA coordinator has addressed this matter with, the chairperson of the historic preservation program.
	Signature of ADA coordinator
	Date of meeting with historic preservation program
7.	A public entity should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by Title II, are made properly and expeditiously.
	Done
	Not Done
	Signature of person who performed the review
	Date of review
8.	A public entity should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.
	Done, see previous pages.
	Not Done
9.	A public entity should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulations issued by the Equal Employment Opportunity Commission.
	This was accomplished by way of an interview between (city attorney
	or Municipal League representative) and (ADA coordinator) on (date).
10.	A public entity should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conform to the standards designated under the Title II regulation.
	Done
	Not Done
	Signature of person who performed the review
	Date of review

	measures have been taken to ensure that employees of the policies and practices for the full participation of tining should be provided to employees.
This has been done,	see previous portions of this ADA compliance packet.
usage, it should make sure that such policies d	in its programs, activities, or services based on a drug to not discriminate against former drug users, as opposed egal use of drugs. The City of does not n its programs, activities, or services.
1) 2)	ntures of everyone who participated:
This ADA Salf avaluation and Transition D	DATE: City Council Adoption lan is hereby adopted by the City Council of
on this	
13. See Ordinance or Resolution by refe	
	Chairperson
	ATTEST:
	City Clerk
	Date



Americans with Disabilities Act Title II Compliance Guide

Arkansas Municipal League
P.O. Box 38
North Little Rock, AR 72115-0038

501-374-3484 www.arml.org