

TOOLS for the *New City Councilor*

How the ADA Impacts Cities

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Recently, the U.S. celebrated the 20th anniversary of the Americans with Disabilities Act (the ADA). At its heart, the ADA is a civil rights law that calls for the removal of all barriers, physical and mental, that prevent individuals with disabilities from fully integrating into society. Specifically, the ADA provides equal access and opportunity to individuals with disabilities in the following areas: employment, state and local government, public places and services operated by private companies, telecommunications and transportation.

The ADA impacts cities in multiple ways, so it is important for city leaders to be aware of: the requirements of the ADA and whether the city complies with those requirements. This article provides city leaders with basic information about the requirements of the ADA, and the resources to determine whether their city complies with those requirements.

The Basics

The ADA defines *disability* as: “a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of having such impairment; or being regarded as having such impairment.” The ADA provides protection to an individual who meets this definition.

Title II of the ADA applies to state and local government and establishes the rules that all “public entities” must follow in providing public services. The ADA defines the term “public entities” to include a state or local government and any of its departments, agencies or other instrumentalities. All activities, services and programs of public entities are covered. Examples include: activities of state legislatures, the court system, city meetings, police and fire departments, motor vehicle licensing, and employment.

In general, Title II of the ADA requires that cities operate their programs so that, when viewed in their entirety, the programs are readily accessible to and usable by individuals with disabilities. Specifically, Title II of the ADA requires that cities:

- Provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity to qualified individuals with disabilities;

- Eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy services, programs or activities unless necessary for the provision of the service, program or activity;
- Make reasonable modifications in their policies, practices and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result; and
- Furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

Additionally, Title II of the ADA states that cities may not:

- Refuse to allow a person with a disability to participate in a service, program or activity provided by the city simply because the person has a disability; or
- Place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

Some examples of areas where cities could run afoul of the ADA include: not providing “direct access” to emergency telephone services; establishing eligibility criteria for programs or services that actually screen out individuals with disabilities; failing to designate an ADA coordinator; and not allowing the use of a service animal in a public building.

The Resources

In light of the ADA’s 20-year anniversary, the ADA National Network, which receives federal funding through the U.S. Department of Education, prepared a clearinghouse of resources for state and local government. (On the Web, see www.adacourse.org.) One resource recommends that cities go through the following steps to test whether their community is ADA compliant:

1. **Designate a responsible employee to coordinate and ensure ADA compliance.** This requirement ensures that the public can identify a person who is familiar with the requirements of the ADA and who can communicate these requirements to other individuals in the agency who may be unaware of their responsibilities. The public entity must provide the ADA

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coordinator’s name, office address, and telephone number to the general public. The ADA coordinator’s role includes planning and coordinating overall compliance efforts, ensuring that the administrative requirements are achieved, and receiving and investigating grievances on programs, services, practices and employment.

2. **Provide notice of ADA requirements.** All public entities, regardless of size, must provide information to all interested parties regarding the rights and protections afforded by Title II, including information about how the Title II requirements apply to its particular programs, services and activities. The public entity must provide the information on an ongoing basis.
3. **Establish a grievance procedure.** Grievance procedures must be adopted and published. These procedures provide for a prompt and equitable resolution of grievances arising under Title II. The ADA coordinator is responsible for receiving and investigating complaints. The purpose of the grievance procedure is to provide a mechanism for the resolution of discrimination issues.
4. **Develop a transition plan.** A transition plan must be developed when structural changes to existing facilities are necessary in order to make a program, service or activity accessible to individuals with disabilities. The transition plan identifies physical obstacles that limit: the accessibility of programs, services or activities to individuals with disabilities; describes the methods to be used to make the facilities accessible; provides a schedule for making the access modifications; and indicates the public official responsible for implementation of the transition plan. (Source: ADA National Network, *What Steps Should State and Local Government Entities Take to Ensure Compliance with the ADA?* www.adacourse.org/solutions)

If it has been several years since your city has conducted a comprehensive review that includes the steps listed above, then it may be beneficial to do so now. Any city practices or policies that are identified as ADA non-compliant during the review should be modified accordingly. The following is a list of additional resources that may help in the review and modification process. These resources also elaborate on the basic information provided here.

Additional resources:

- ORS 659A.103 through 659A.145
- ORS 447.210 through 447.310
- Oregon Structural Specialty Code: http://ecodes.biz/ecodes_support/free_resources/Oregon/10_Structural/10_PDFs/Chapter%2011_Accessibility.pdf.
- Oregon Disabilities Commission (ODC): www.oregon.gov/DHS/spd/adv/odc
- Job Accommodation Network: <http://askjan.org>
- Oregon Bureau of Labor and Industries (BOLI): www.oregon.gov/BOLI
- US Equal Employment Opportunity Commission (EEOC): www.eeoc.gov
- Federal Department of Labor Office of Disability Employment Policies (ODEP): www.dol.gov/odep ■

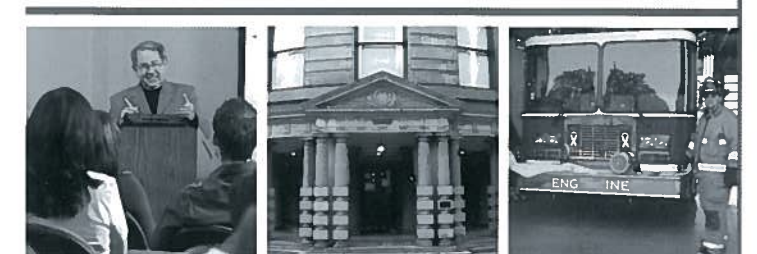
Because of the complexities of the ADA, this article is necessarily general and is not intended to provide legal advice. This article should not serve as a substitute for competent legal counsel. Please consult with your legal counsel to ensure that your city is in full compliance with the ADA.

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