

**To: The Mayor, City Council, Public Works board and City Attorney for the City of La Crosse.**

**From: The Committee for Citizens with Disabilities.**

**Subject: The City of La Crosse is in jeopardy of losing large sums of federal funds as well as being subject to a Department of Justice lawsuit based upon non-compliance with federal American with Disabilities Act (ADA) laws.**

**Goal: To highly recommend the immediate appropriation of funding for the hiring of a full time ADA administrator, who is trained and up to speed with current best practices.**

**Long Term Goals: Further advancement of civil rights of all citizens in the City of La Crosse.**

The Committee for Citizens with Disabilities Board was established, in part, to remedy and correct the decades long struggles to bring the City of La Crosse into compliance with federal ADA laws, as well as to improve the conditions and environment for persons with disabilities in the City of La Crosse. This document, produced and reviewed by the board is a summation of the status of ADA compliance for the City of La Crosse.

Based upon the City of La Crosse's failure to fully comply and maintain the Federal laws pertaining to the American with Disabilities Act, the city is in grave danger of losing federal dollars as well as being fined for breaking the laws set forth over 30 years ago. The city needs to move fast and hire an expert, full time ADA administrator, who is trained and up to speed with current best practices. The city cannot afford to maintain its present course of hiring part-time construction personal, schooled in the use of building codes and inspection.

The citizens of La Crosse deserve an up to date and compliant community structure that follows guidelines set forth by federal law. True accessibility comes from a city government that is proactive in its environment and structures. At the present time. The vast majority of accommodations for persons with disabilities

in the city are reactive and must be requested, or remediated, after the fact, thus excluding the person from participating in, or contributing to, public meetings, gatherings, activities and mobility.

The following links are examples of towns and cities that have been found to be in violation of the ADA laws. Milwaukee and the Wisconsin Dells were held in violation in 2016. It would only take one person or group to file a federal claim to initiate a full review.

[Settlement Agreement - Between The United States of America and The City of Laramie, Wyoming \(ada.gov\)](#)

[SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CITY OF WAUKEGAN, ILLINOIS \(ada.gov\)](#)

[Settlement Agreement between the United States of America and The City of Wisconsin Dells, Wisconsin \(ada.gov\)](#)

[Settlement Agreement between the United States and the City of Milwaukee, Wisconsin \(ada.gov\)](#)

**It is the recommendation of the Committee for Citizens with Disabilities that a full time ADA Administrator be hired with the following job description.**

Produce and maintain a prescribed ADA grievance procedure and forms for public use.

Develop a transition plan for current and future needs of persons with disabilities. This plan must be followed up by documented public input and comment.

Inspect and clear for ADA compliance, temporary events and activities held on city property. Examples: Riverfest, Oktoberfest, Moontunes, Irishfest, etc. (The city relies on public complaints called in after the fact.) There is no accounting or record.

Draw up and maintain self-evaluation documentation to be available to the general public as well as federal authorities.

Provide businesses with tax incentives and grant options to pay for modifications to bring their businesses into compliance.

Initiate and field questions and concerns about accessibility in new construction during the planning and approval process through city government agencies. (Now it is left up to concerned citizens, if they get access to the plans ahead of time, or city engineers and inspectors who have other tasks and concerns based on building code violations)

Provide Certification that can be advantageous if an entity has constructed or altered a facility according to a certified code or ordinance. If someone later brings an enforcement proceeding against the entity, the certification is considered "rebuttable evidence" that the state law or local ordinance meets or exceeds the minimum requirements of the ADA. In other words, the entity can argue that the construction or alteration met the requirements of the ADA because it was done in compliance with the state or local code that had been certified.

Review, update and monitor all city communication to residents to check for accessibility compliance. Examples: provide and maintain up-to-date lists of interpreters, for the deaf, ESL and other persons with disabilities related to language. (The city relies on complaints, many after the fact. Most disabled residents do not even realize that many programs exist, due to a lack of coordinated messaging sent out by the city.)

Coordinate and interact with private and non-profit organizations that assist persons with disabilities.

Maintain an active presence and interact with the Committee for Citizens with Disabilities Board.

Provide private business owners within the City of La Crosse, the resources and knowledge needed to build up and maintain best practices concerning Title III, ADA laws and regulations.

Legal requirements for the position are set forth using the current guidelines of the Settlement Agreements issued to cities by the Department of Justice.

Below is an example of a compliance review for the City of Milwaukee WI, in 2016.

The United States initiated this matter as a compliance review of the City of Milwaukee, Wisconsin (City), under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the United States Department of Justice's implementing regulation, 28 C.F.R. Part 35. Because the City of Milwaukee receives financial assistance from the Department of Justice, the review was also conducted under the authority of section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and the Department of Justice's implementing regulation, 28 C.F.R. Part 42, Subpart G.

The Disability Rights Section of the Department of Justice's Civil Rights Division conducted this review of the City's compliance with the following title II requirements:

to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department of Justice's title II regulation, 28 C.F.R. § 35.105;

to notify applicants, participants, beneficiaries, and other interested people of their rights and the City's obligations under title II and the Department of Justice's regulation, 28 C.F.R. § 35.106;

to designate a responsible employee to coordinate its efforts to comply with and carry out the City's ADA responsibilities, 28 C.F.R. § 35.107(a);

to establish a grievance procedure for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);

to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. §§ 35.149-.150, by:

delivering of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of

aides, home visits, or other methods of compliance and/or;

making physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department of Justice's title II regulation, 28 C.F.R. §§ 35.150-.151, and the 1991 ADA Standards for Accessible Design (1991 ADA Standards), 28 C.F.R. Part 36, App. D (2011) or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A, and the 2010 ADA Standards for Accessible Design (2010 Standards), 28 C.F.R. § 35.104;<sup>1</sup>

to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department of Justice's title II regulation and 2) the 1991 ADA Standards or UFAS, or the 2010 ADA Standards, as applicable, 28 C.F.R. § 35.151;

to ensure that communications with people with disabilities, including applicants, participants, and members of the public, are as effective as communications with others, including furnishing auxiliary aids and services, when necessary, 28 C.F.R. § 35.160;

to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, including 911 services, 28 C.F.R. § 35.162;

to provide information for interested people with disabilities concerning the existence and location of the City's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and

to provide signage at all inaccessible entrances to any facility, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).

## References:

[Nondiscrimination on the Basis of Disability in State and Local Government Services \(ada.gov\)](#)

[§ 35.107 Designation of responsible employee and adoption of grievance procedures.](#)

[Department of Justice ADA Guide for Small Towns](#) : 6. Processes for Complying with the ADA

[The ADA and City Governments: Common Problems](#)

[About the ADA Guides \(access-board.gov\)](#)

The following excerpts are taken from the federal ADA guide. The ADA code laws are listed related to the jobs that must be performed for a city the size of La Crosse.

§35.105 Self-evaluation.

(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.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self- evaluation.

The self-evaluation typically includes a review of polices, practices, and procedures (see page 10, Processes for Complying with the ADA). Periodic review after the self-evaluation may be done to maintain compliance with the ADA. A town can choose how it wants to conduct a review of policies and practices that govern the administration of the town's programs, activities, and services. Towns that have already done a self-evaluation do not have to do another one.

Towns that have not already conducted a self-evaluation or updated a previous self-evaluation conducted under Section 504 of the Rehabilitation Act must do so. The self- evaluation is a review of all town services, programs, and activities to identify any physical barriers or policies, practices, or procedures that may limit or exclude participation by people with disabilities. The self-evaluation includes permanent, temporary, and periodic services, programs, and activities. Each town should look at what services, programs, or activities are offered and in what location.

Any policies, practices, or procedures that may limit or exclude individuals with disabilities must be reasonably modified, unless doing so would result in a fundamental alteration in the nature of the service, program, or activity. The self-evaluation should identify changes to policies to be implemented. It should also identify any discriminatory policies, practices, and procedures that cannot be reasonably changed without resulting in a fundamental alteration.

The self-evaluation also identifies problems with the accessibility of facilities and establishes recommendations for providing program accessibility (which may include relocation to an accessible facility). It may also suggest short-term and long-term strategies to provide access to people with disabilities.

Towns that completed a self-evaluation to comply with section 504 of the Rehabilitation Act only have to bring the 504 self-evaluation up to date with ADA requirements by evaluating the services, programs, and activities that have changed. However, because considerable time has passed since most section 504 self-evaluations were done, it would be best to conduct a new self-evaluation.

b. Develop a transition plan

If a town with 50 or more employees decides to make physical changes to achieve program access it must develop a written plan that identifies the modifications that will be made. The plan should include timelines for completing these modifications. Interested parties, including people with disabilities and organizations representing people with disabilities, must at a minimum have an opportunity to participate in the development of the plan by submitting comments. A copy of the plan and a copy of the self-evaluation must be available for public inspection for three years after completion.

§35.107 Designation of responsible employee and adoption of grievance procedures.

Consistent with §35.105, Self-evaluation, the final rule requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. Most of the commenters who suggested that the requirement that self-evaluation be maintained on file for three years not be limited to those employing 50 or more persons made a similar suggestion concerning §35.107. Commenters recommended either that all public entities be subject to section 35.107, or that "50 or more persons" be changed to "15 or more persons." As explained in the discussion of §35.105, the Department has not adopted this suggestion.

The requirement for designation of an employee responsible for coordination of

efforts to carry out responsibilities under this part is derived from the HEW regulation implementing section 504 in federally assisted programs. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities with 50 or more employees to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (*see, e.g.*, 45 CFR 84.7(b)). The rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under §35.170(b).

#### §35.106 Notice

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination

assured them by the Act and this part.

§35.107 Designation of responsible employee and adoption of grievance procedures.

(a) ***Designation of responsible employee.*** A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) ***Complaint procedure.*** A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The Department recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. The intention of this paragraph is that the determination must be made by a high-level official, no lower than a department head, having budgetary authority and responsibility for making spending decisions.

*Provide public notice about ADA requirements*

A small town must provide notice to the public about its ADA obligations and about accessible facilities and services in the town. The notice must inform the public about the ADA's nondiscrimination requirements. It may also describe how the public or employees may contact specific town officials about problems with accessibility and the need for effective communication. The information must be accessible to the public, including people who have disabilities that affect communication, such as blindness, low vision, deafness, and hearing loss. Although no specific method is required to reach the public, notice can be provided in more than one format and by using more than one type of media, such as the town's

website, print, radio, or television.

Other obligations for larger towns with 50 or more employees

Although the ADA only requires State and local governments with 50 or more employees to take the following measures, towns with less than fifty employees may want to consider following the same or similar steps because the process may make it easier to comply with the ADA.

#### §35.160 General.

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b)(1) requires the public entity to furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice shall be given primary consideration by the public entity (Sec.35.160(b)(2)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under Sec.35.164.

Section 35.162 requires public entities to take appropriate steps, including equipping their emergency systems with modern technology, as may be necessary to promptly receive and respond to a call from users of TDD's and computer modems. Entities are allowed the flexibility to determine what is the appropriate technology for their particular needs. In order to avoid mandating use of particular technologies that may become outdated, the Department has eliminated the references to the Baudot and ASCII formats in the proposed rule.

#### §35.163 Information and Signage

Section 35.163(a) requires the public entity to provide information to individuals with disabilities concerning accessible services, activities, and facilities. Paragraph (b) requires the public entity to provide signage at all inaccessible entrances to

each of its facilities that directs users to an accessible entrance or to a location with information about accessible facilities.

#### §35.170 Complaints.

Section 35.170 provides that any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part within 180 days of the date of the alleged discrimination, unless the time for filing is extended by the agency for good cause. Although §35.107 requires public entities that employ 50 or more persons to establish grievance procedures for resolution of complaints, exhaustion of those procedures is not a prerequisite to filing a complaint under this section. If a complainant chooses to follow the public entity's grievance procedures, however, any resulting delay may be considered good cause for extending the time allowed for filing a complaint under this part.

Filing the complaint with any Federal agency will satisfy the requirement for timely filing. As explained below, a complaint filed with an agency that has jurisdiction under section 504 will be processed under the agency's procedures for enforcing section 504.

#### §35.176 Alternative means of dispute resolution.

Section 35.176 restates section 513 of the Act, which encourages use of alternative means of dispute resolution.

#### Temporary Events

The ADA applies to both temporary and permanent services, programs, or activities of a town. Facilities and structures that are built or altered for temporary use must comply with the ADA Standards (except for construction trailers). In addition, the policies and operations for the event must meet the nondiscrimination requirements of the ADA. When planning temporary events such as a town festival or concert, the town should review ADA title II requirements<sup>2</sup> and the ADA Standards. The Standards can provide guidance to help event planners place temporary accessible parking spaces in appropriate

locations, provide an accessible route throughout the site, and provide other accessible features for food service, toilet facilities (including accessible portable toilets), assembly area seating, public telephones, etc., where such elements or facilities are provided for the public. It is very important to consider accessibility requirements when the event is in the planning stage so that accessible facilities can be identified and incorporated in a manner that does not require extensive construction or last-minute modifications.

Effective communication requirements also apply to temporary events. It may be necessary to provide qualified sign language interpreters or other auxiliary aids and services as requested, such as print material in a large-print format or on computer disk. A town may choose when to provide interpreters and publicize a schedule for interpreters and other auxiliary aids and services. It should also provide auxiliary aids or services in response to individual requests, unless to do so would result in undue financial and administrative burdens. Promotional material for a temporary event should explain how the public can request a particular auxiliary aid or service and be informed of when specific auxiliary aids and services may be available.

Section 35.133 provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators locked accessible doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

ADA laws not being followed by the City of La Crosse

§35.106 Notice.

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in

handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in §35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.