

City of Northampton
ADA Self-Evaluation and
Transition Plan Update

Prepared by the
Northampton Disability Commission

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DRAFT

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Introduction and Purpose

This preliminary report presents recommendations to the Mayor and City Council of actions aimed at strengthening the City of Northampton's compliance with Title II of the Americans with Disabilities Act (ADA). The purpose of this document is to promote a renewal of commitment by municipal leaders and the citizens of the City to building the capacity of municipal government through its various departments to promote the fullest possible participation of people with disabilities in public programs, services and activities.

Thirteen priority recommendations are summarized below and discussed in greater detail in Part 2 of the report. They are the outcome of an extended review by the Disability Commission and ADA Coordinator of whether and how effectively the antidiscrimination requirements of the ADA are integrated into the day-to-day operation of Northampton's municipal programs, activities, services and facilities. Strong support was provided throughout the process by the ADA Coordinators, both the current Coordinator Marie Westburg and her immediate predecessor Linda Desmond. The Commission warmly commends Director of Planning and Sustainability, Wayne Feiden, for his strong, timely and effective leadership in securing two rounds of grant funding from the Massachusetts Office on Disability (MOD).

The first planning grant, secured in the spring of 2017, was used to field two experienced ADA compliance planning consultants, Attorney Melissa Marshall of West Hartford, Connecticut and Jacquelyn Bergin, of Chesterfield, Massachusetts. Attorney Marshall teamed with Commission member Gene Page, now Chair of the Disability Commission, to conduct a series of preliminary interviews with department heads and other senior administrators during the start-up of the project in June 2017. During the same time period, Jacquelyn Bergin carried out accessibility surveys of key buildings and facilities to identify missing, deteriorated or unusable access elements and features that may limit the use of facilities or in some instances impose hazards.

A second grant was secured from MOD in 2018 to carry out repairs and improvements to the accessibility of the pedestrian environment around City Hall, including access routes connecting City Hall to the Municipal Annex, Pulaski Park, the crosswalk to the east side of Main Street and the ramp to the accessible entrance on the lower level of City Hall.

The following recommendations lay out a broad scope of work to be carried out over the next few years by a strengthened and more focused ADA Coordinator.

1. Restructure the ADA Coordinator position to ensure that the Coordinator is able to commit adequate time and resources to carry out essential ADA compliance functions.

2. Define procedures and standards for responding in a timely way to requests for installation of curb-cuts or repair of deteriorated walkways.
3. Promote and enforce snow removal procedures to minimize interruption to accessible pedestrian routes in winter weather.
4. Strengthen enforcement of parking rules to ensure that public walkways are not blocked by commercial, municipal or privately-operated vehicles.
5. Strengthen effective communication procedures, technology and resources including timely provision of sign language interpreter services, expanded captioning of City Council and School Committee meetings and expanded use of assisted listening systems.
6. Define procedures and standards for providing reasonable modifications to policies and procedures.
7. Upgrade accessible parking in the public garage, lots and on-street locations.
8. Improve the accessibility of parks and open spaces.
9. Provide at least one fully accessible toilet room for each user group attending meetings at City Council Chambers.
10. Upgrade the emergency shelter at Smith Vocational and Agricultural High providing fully accessible toilet rooms, showers and access to the stage.
11. Improve accessibility at high volume crosswalks including West Street and Green Street through a combination of audible signals, better markings and curb extensions.
12. Create and carry out a program of departmental staff training to develop the knowledge and skills needed to more effectively meet ADA obligations.
13. Define procedures, standards and time frames for handling ADA related grievances and for making decisions regarding undue burden, undue hardship and fundamental alteration as limits to ADA obligations.

The ADA and Disability Rights Law

The ADA was enacted in 1990 by overwhelming majorities in both Houses of Congress. It was the most far reaching extension of civil rights protections following the Civil Rights Act of 1964. Signed into law by President George Herbert Walker Bush on July 26, 1990 to the refrain, "Let the shameful walls of exclusion . . . come tumbling down." The ADA set the capstone to a sweeping revision of national disability policy driven by the integration imperative over the second half of the 20th century. Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Civil Rights Restoration Act and the Fair Housing Act Amendments are all part of the broad framework of antidiscrimination protections rooted in the 14th amendment guarantees of equal opportunity and equal protection that now covers persons with all forms of physical, mental, sensory, developmental, neurological and psychological disabilities.

Title II, the section of the ADA that defines the obligations of the City of Northampton is based on the compliance framework of section 504 of the Rehabilitation Act that has been in effect since 1977. While the Title II regulations published by the US Department of Justice in January of 1992 extended and clarified disability rights obligations – most notably in the area of effective communications and information technology -- the core obligations addressed by the City when it adopted its initial ADA Compliance Plan in January of 1995 had been in effect for more than fifteen years.

The 1995 Plan included a general access assessment of nineteen municipal buildings and facilities including eight public schools. Each was assigned to one of four categories: *largely accessible*, *partially accessible*, *partially inaccessible* and *largely inaccessible*. The Plan also addressed some policy and procedural areas that fall under Title II requirements but the scope was incomplete. The original compliance planning effort was not only limited in scope and detail, some of the policy areas addressed such as the commitment to providing sign language interpreters and assistive listening systems have eroded over time.

And so, while it is clear that substantial progress has been made over more than two decades since the compliance plan was adopted, it is also clear that much remains to be done.

Self-Evaluation Review and Update

By the fall of 2016, the Disability Commission was aware that the ADA Compliance Plan was outdated. Several incidents, described below, made it clear that the city needed to reinvigorate its commitment to reducing operational, structural and communication barriers that limit the participation of people with disabilities in the life of the community.

The historic importance of disability issues to this community cannot be overstated. From the renovated buildings on Hospital Hill to the Clarke School for Hearing and Speech, the Senior Center, the Salvo and McDonald Houses, the Veterans' Administration Hospital, the Hampshire County House of Corrections, and even within the gates of Smith College, there is ample evidence that the community of persons with

disabilities who live, work, and visit in Northampton is extraordinarily large and heterogeneous.

The Commission originally planned to review and update the City's ADA policies and procedures as a voluntary effort. In early 2017, however, the Massachusetts Office on Disability (MOD) announced a grant program aimed at enhancing ADA compliance in municipalities. The Commission then partnered with the Office of Planning and Sustainability and successfully secured a small (\$10K) planning grant to support the update.

Funding became available in early June 2017 for work that had to be completed by the end of the Commonwealth's fiscal year on the last day of the month (June 30, 2017). Consultants were brought in immediately to conduct interviews and accessibility surveys (see appendices). Following that first phase of intense activity the assessment was extended through the summer and autumn.

The Mayor became actively involved, meeting with the ADA coordinator and representatives of the Commission to resolve a number of issues including preliminary discussion of the need to restructure the ADA Coordinator position. The Mayor also convened a meeting of department heads and senior municipal staff at which an overview of Title II requirements and the assessment process were presented.

In the spring of 2018 a second grant request was submitted to MOD, and \$250k secured -- one quarter of the total funding for the statewide grant program -- for accessibility improvements connecting City Hall and adjacent municipal buildings, to recently renovated Pulaski Park.

ADA Title II Requirements

The assessment procedures followed by the Commission are based on the compliance planning framework of the *ADA Title II Action Guide*. The Action Guide is a technical assistance manual funded by the National Institute on Disability and Rehabilitation Research of the US Department of Education that identifies *5 Administrative Actions* required of all state and local government entities.

- 1. To appoint an ADA Coordinator responsible for overseeing and coordinating all compliance activities.*
- 2. To provide Public Notice of rights and protections under the ADA and how the entity meets its obligations.*
- 3. To adopt and administer a Grievance Procedure for prompt and equitable resolution of complaints and disputes.*
- 4. To conduct a comprehensive review, or Self Evaluation of policies and procedures in four functional areas:*

- *Program and Facility Accessibility*
- *Non-discriminatory Operation of Programs and Services*
- *Effective Communication & IT Accessibility*
- *Equal Employment Opportunity*

5. *Finally - to adopt and carry out a Transition Plan of structural and non-structural barrier removal solutions.*

Findings and Recommendations:

1. Restructure ADA Coordinator position

There is general agreement that the position of ADA Coordinator as now defined is simply not workable. Not only is the workload excessive, but the Coordinator's role requires extensive knowledge of disability law and policy, federal and state accessibility standards, and the rapidly developing field of accessible information technology.

Over the past three years demands have increased on the Coordinator's position to respond to a wide range of issues and concerns presented to the Disability Commission.

Discussions with the Mayor identified sharing the ADA Coordinator position with one or more nearby communities as a potential solution. It is an idea that needs to be actively pursued and, if not feasible, an alternative developed.

It is clear that any solution is going to require a more substantial investment of resources than the City has previously made.

2. Define procedures and standards for responding in a timely way to requests for installation of curb-cuts or repair of deteriorated walkways

The City's pedestrian environment is seriously deteriorated in places and in some that deterioration rises to the level of actual hazards as was illustrated in the following incident reported to the Commission:



During the reconstruction of Pleasant Street walkways access routes used daily by a resident of a neighborhood near the construction zone were blocked. Forced to seek an alternative route to work, she was unable to negotiate steep and deteriorated asphalt walkways on Hawley Street. The only wheelchair navigable route available to her was on a section of roadway where she was hit and knocked out of her chair by a car. Her bodily injuries were less severe than the damage to her wheelchair which had to be replaced, a process that required extensive documentation and took months to complete.



In response to this and related incidents, the Commission believes a flexible problem-solving procedure is needed under which the ADA Coordinator will receive and evaluate requests or complaints from qualified individuals, households and organizations. The Coordinator will then work with appropriate city departments and, if necessary, private contractors, to ensure that curb cuts are installed and repairs or improvements are carried out in a timely way to ensure that pedestrian routes are safe and usable.

3. Enforce snow removal standards to minimize interruptions to accessible pedestrian routes following winter storms

Each year access routes in both commercial and residential areas of the city are disrupted by snow storms. A common complaint heard by the Commission is that clearing of walkways is often delayed and frequently inadequate. Inadequately cleared pathways are often too narrow for use by wheelchairs or scooters, and surface icing presents hazards to all pedestrians with or without limited mobility.

In commercial districts prompt clearing of access routes, curb cuts and crosswalks must be elevated as a priority, and effective standards and techniques for clearance must be promoted. In residential areas, homeowners must be made aware of their obligations to clear sidewalks. And in situations when homeowners are physically unable to comply and contractor services pose a financial hardship, linkages with volunteer networks should be explored. Concerns have also been expressed that plowing of roadways should be carried out in ways that avoid whenever possible redepositing of snow onto already cleared sidewalks.

4. Strengthen enforcement of parking rules to ensure that public walkways are not blocked by commercial, municipal or privately-operated vehicles and when necessary install bollards, planters or other structures to prevent illegal parking

Repeated complaints have been brought to the Commission regarding blockage of sidewalks by trucks and vehicles in a number of locations but most frequently at the intersection of a gas station apron and adjacent sidewalk on King Street near the Hotel Northampton.



5. Strengthen the use of effective communication procedures, technology and resources

Northampton is home to a large deaf and hard of hearing population. Engagement of these persons in the political and cultural life of the city has been circumscribed and frequently limited by inadequate and undependable communications services and technology including, sign language interpretation, sound amplification, lack of captioning of cable broadcasts and inadequate information technology accessibility.

A deaf resident came before the Commission seeking a solution to a hazardous traffic condition at his home. The issue had been long standing, and among the reasons for the delay was that a sign language interpreter had not been offered in a meeting with a city department the previous year. In fact, the Commission discovered that there was no procedure in place for providing sign language interpretation. A year elapsed during which the deaf resident vacated and rented his home before a meeting was conducted with a sign language interpreter present that led to a site visit to identify a solution.

This incident demonstrated two interrelated needs:

First, effective communication procedures, resources and technology are needed to ensure that people with limited hearing, vision, speech and information processing skills are able to participate fully in the flow of communication and information;

Second, city staff, elected officials and volunteers need to be trained in how to provide and effectively participate in a multi-modal, effective communication environment, and:

Effective communication is addressed immediately below and reasonable modification policy in the next section.

- Develop and implement procedures for securing sign language interpreter services when needed to communicate with individuals who are deaf. The procedures should include the identification of at least three freelance interpreters who work in the area; timeframes for responding to requests for interpreter services and at least one source for on-call interpreter services to be used in urgent situations.
- Promote use of assistive listening systems: clarify procedures for providing assistive listening systems at City Council and public meetings including municipal programs and whenever municipal spaces are used by community groups. Maintenance of the system at City Council Chambers, a portable system are immediate priorities.
- Work with cable access TV to strengthen real time and after meeting captioning of key videos.

- Promote the use of best practices in information technology accessibility on the City website (see preliminary report appendix x).

6. Adopt procedures and standards for providing reasonable modifications to policies and procedures when necessary to resolve structural or operational barriers that limit participation of people with disabilities

Title II uses the term “reasonable modification” for the operation of public programs as the functional equivalent to “reasonable accommodation” in employment. Differentiation of the two terms is important as different bodies of case law and regulatory guidance now apply.

7. Provide code compliant accessible parking in the public garage, lots and on-street locations

Reserved accessible (HP) spaces in the public garage located near the base of the ramp to Thorne’s Market are on surfaces with slopes that substantially exceed the maximum allowed by accessibility codes, some spaces in parking lots designated accessible are not configured with access aisles, some parking kiosks are not mounted within compliant reach ranges, also the installation of electric car charging stations must be carried out in a way that provides equal opportunity for persons with disabilities to benefit from this source of publicly subsidized energy.

- Provide at least one van accessible space in the municipal garage.
- Re-mark spaces designated accessible in city lots that do not have required access aisles.
- Ensure that the parking kiosks are on accessible routes and mounted within accessible reach ranges.
- Provide accessibility to a reasonable number of electric car charging stations.

8. Improve the accessibility of parks and open spaces

- Reduce tripping hazards and obstacles on pedestrian pathways in parks and recreation areas.
- Install accessible seating extensions on at least one picnic table in each recreation area.
- Install electrical charging devices usable by power wheelchairs and scooters in at least two downtown locations.

9. Provide at least one fully accessible toilet room usable by persons attending meetings in City Council Chambers

Council Chambers is a focal point of the City’s commitment to democratic process and citizen participation. Public process, however, is often time-consuming. This means for

many the ready availability for fully accessible toilet rooms is essential, but toilet rooms on the upper level of the Annex at present are undersized and have a number of noncompliant or missing access elements.

10. Upgrade accessibility of the emergency shelter at Smith Vocational and Agricultural High School

There are no fully accessible toilet rooms or showers for either gender, and there is no access to the stage which is likely to be a focal point of communication in any emergency situation.

- Provide at least one fully accessible toilet and shower room for use by each gender when the shelter is in use.
- Provide access to the stage by ramp or lift.

11. Improve accessibility at high volume crosswalks including West Street and Green Street through a combination of audible signals, better markings and curb extensions

The West Street intersection is among the most difficult and dangerous in the city for both pedestrians and drivers to negotiate. Problems presented by the multi lane intersection are compounded by the steep slopes that ascend from the central business district to Smith College. Patrons of Forbes Library have also expressed concern that crossing on a curve from the library to Green Street is not well enough defined visually to provide safe crossing.



12. Carry out a program of departmental staff training to develop the knowledge and skills needed to meet ADA obligations

Training is essential to integrating ADA compliance across departments and programs. Beyond the basics of the law, general disability awareness and principles of appropriate interaction and communication, training will need to be customized to the roles and functions of each department. This is one of the skill areas to be addressed in upgrading the position of the ADA Coordinator.

13. Define procedures and standards for decision making regarding undue burden, undue hardship and fundamental alteration, and clarify time frames for resolution of grievances

Decision making regarding limits to the City's obligations to carry out a requested compliance related action must be made on the basis of one of three legal defenses: undue hardship, undue burden or fundamental alteration. The City has adopted a grievance procedure using language recommended by the Massachusetts Office on Disability to resolve conflicts and disputes arising in relation to allegations of discrimination based on disability. A revised grievance procedure is recommended to define time frames for evaluating complaints and applying appropriate defense within specific time frames as well as providing for an appeal to the Mayor.

Appendix A - Model Policies

Undue Burden, Undue Hardship, and Fundamental Alteration

In any circumstance when a requested accommodation, modification or other action in fulfillment of the City's obligation under Title II of the ADA, in the opinion of the ADA Coordinator, may involve an undue financial or administrative burden or hardship, or a fundamental alteration to a program, service or activity, the Coordinator will refer the request to the Mayor for a final decision and will assist the Mayor in documenting the reason for acceptance or denial of any such request.

Grievance Procedure

ADA Grievance Procedure

This grievance procedure is established by the City of Northampton to meet the requirements of Title II of the *Americans with Disabilities Act*. Disabled individuals or their authorized representatives who believe that they have been discriminated against on the basis of disability in employment or the provision of services, activities, programs, or benefits are encouraged to use the procedure to bring their complaints to the attention of the City of Northampton.

Complaints should be submitted in writing or on audio-recording to the ADA Coordinator named below. Each complaint should include a description of the alleged discriminatory incident or action, the place and date of its occurrence, the name of the person or persons who witnessed or were adversely affected by the incident or action, and the name of any employee or representative of the City of Northampton involved. The complaint should also include the name, address, and phone number of the person bringing the complaint or their authorized representative.

Alternative means of filing complaints, such as personal interviews or audio recording, will be arranged if needed on request. If assistance is needed to file or pursue the complaint, the ADA Coordinator will provide assistance. The complaint should be submitted to the ADA Coordinator or the Mayor as soon as possible within 60 calendar days of the alleged discriminatory incident. The Coordinator or Mayor will consider requests to hear complaints regarding incidents after more than 60 days have passed.

ADA Coordinator: [contact information]

Mayor: [contact info]

Within 15 calendar days of receipt of the complaint, the ADA Coordinator will meet with the complainant to clarify the facts of the incident and discuss possible resolutions. Within 15 calendar days after the meeting, the ADA Coordinator, will respond in writing, or if needed for effective communication, in an alternate format preferred by the complainant, such as large print, Braille, or audio recording. The response will explain the position of the City of Northampton and present options for substantive resolution of the complaint.

If the ADA Coordinator's response does not satisfactorily resolve the issue, the complainant may appeal the Coordinator's decision within 15 calendar days of its receipt to the Mayor. Within 15 calendar days of receipt of the appeal, the Mayor or his or her designee will meet with the complainant to further clarify the complaint and discuss possible resolutions. Within 15 calendar days of the meeting the Mayor will respond in writing or alternate format with a final resolution of the complaint.

All complaints received by the ADA Coordinator, appeals to the Mayor, and responses will be kept on file for at least three years.

Reasonable Modification Policy

The *Reasonable Modification Policy* embodies an essential principle underlying Title II. The obligation is for the City to engage actively in problem solving to address, mitigate and wherever possible eliminate operational barriers to full participation by persons with disabilities. This includes an obligation to make reasonable modifications to existing policies and procedures when necessary to overcome operational barriers to full participation in public programs, services and activities.

Reasonable Modification

The City of Northampton will make reasonable modifications to policies and procedures necessary to accommodate the needs of a person with a disability whenever an otherwise qualified person with a disability requests such modifications unless it can be demonstrated that the requested modification would impose an undue burden upon the City or require a fundamental alteration to the program, activity or service.

Requests for reasonable modifications should be made to the ADA Coordinator verbally or in writing. The ADA Coordinator will ensure that requests are responded to appropriately and in a timely fashion.

Final decisions regarding requests for reasonable modifications that in the opinion the ADA Coordinator may represent an undue burden or fundamental alteration will be made by the Mayor whenever possible within 10 working days of receipt of the request.

Significant Assistance

Title II requires that programs that receive significant financial or in-kind assistance from the City, including the use of municipal buildings or facilities, not discriminate against persons with disabilities.

Significant Assistance: It is the responsibility of the ADA Coordinator to inform organizations who receive significant financial or in-kind assistance from the City of their obligations not to discriminate against persons with disabilities and to provide guidance on the extent of these obligations and how they can be met. It is also the Coordinator's responsibility to investigate situations in which discrimination may have occurred and to take corrective action or to recommend to the Mayor termination of assistance.

Effective Communication

Title II requires that communications services and technologies be provided to otherwise qualified persons whose disabilities affect vision, hearing or speech, or information processing unless to do so would result in an undue financial or administrative burden or in a fundamental alteration to the program. The City of Northampton currently has only a partial effective communication policy in the 1995 Compliance Plan, but no specific procedures ensuring that *effective communication* obligations are met.

Effective Communications: It is the policy of the City of Northampton that auxiliary aids and services will be provided when necessary to ensure effective communication with persons whose disabilities affect communication. Persons with communications disabilities or their authorized representatives will be given the opportunity to request the aid or service that they prefer and the preferred aid or service will be given primary consideration. The preferred means of communication or an effective alternative means of communication

will be provided unless to do so would impose an undue burden or fundamental alteration.

Requests for auxiliary aids or services should be made verbally or in writing to the ADA Coordinator. Unless otherwise specified, the City asks that requests to be made at least 10 days in advance of the occasion on which the communications support will be needed. Reasonable effort will be made to respond on shorter notice.

The person requesting the service will be notified as soon as possible if the City is unable to meet a request or if an alternative device or service is being offered.

Provision of Alternative Formats: *Documents, publications, and program materials will be made available when needed in alternate formats.*

Braille, large print, audio recordings, and digital media will be prepared at the direction of the ADA Coordinator. Three weeks is usually needed for preparation of Braille materials but reasonable efforts will be made to respond on shorter notice.

A request identifying the materials needed and the preferred alternate format should be made verbally or in writing to staff conducting the program or to the ADA Coordinator at least 10 working days in advance of the program or activity. Reasonable effort will be made to respond to requests made less than 10 days prior to an event or activity.

Primary consideration will be given to the format preferred by the person making the request, and the City will decide whether to provide the preferred format or an effective alternative. All materials will be provided at no charge

If a request cannot be met, the person making the request will be informed as soon as possible but at least 2 days in advance of the event or activity.

Sign Language Interpreter Services: *Sign language interpreters will be provided upon request to any person needing interpreter services in order to participate in any meeting, program, or activity of the City.*

Requests should be made at least 20 working days in advance of the scheduled event or meeting, but reasonable effort will be made to meet requests made on shorter notice. Requests should be made either verbally or in writing to the ADA Coordinator.

Within twenty-four (24) hours of receipt of a request, the ADA Coordinator will contact the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) to schedule the interpreter service.

If MCDHH is not able to schedule interpreters as requested, staff of the City will make reasonable efforts to contact and schedule a freelance interpreter.

If an interpreter cannot be scheduled, the ADA Coordinator will offer an alternative effective form of communication or the opportunity to postpone the meeting until a time when an interpreter is available.

Assistive Listening Devices: It is the policy of the City of Northampton that sound amplification and assistive listening devices be made available for use at public meetings and other activities open to the public.

Assistive listening devices will be provided upon request to persons with impaired hearing when needed to participate in programs and activities.

Video Captioning: It is the policy of the City of Northampton that video materials produced by or on behalf of the City will be captioned and that when videos are purchased or rented for use in municipal programs, captioned versions will be