

## **SECTION 1**

### **Overview of the Americans With Disabilities Act ("ADA") Obligations for Municipal Governments**

#### **OBLIGATIONS UNDER ADA GENERALLY**

The Americans with Disabilities Act ("ADA"), enacted on July 26, 1990, provides comprehensive civil rights protections to persons with disabilities in the areas of employment, state and local government services, access to public accommodations, transportation, and telecommunications. The ADA is companion civil rights legislation with the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. This legislation mandates that qualified disabled individuals shall not be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity. The Act also provides disabled employees with certain protections and requires employers to make reasonable accommodation for disabled applicants and employees.

The particular focus of the Borough of Little Ferry's Transition Plan is to provide accessibility to disabled individuals by addressing and eliminating structural barriers associated with the Borough's public facilities. Access to civic life by people with disabilities is a fundamental goal of the ADA. To ensure that this goal is met, Title II of the ADA requires local governments make their programs and services accessible to persons with disabilities. This requirement extends not only to physical access at government facilities, programs, and

events -- but also to policy changes that governmental entities must make to ensure that all people with disabilities can take part in, and benefit from, the programs and services of local governments. In addition, governmental entities must ensure effective communication -- including the provision of necessary auxiliary aids and services -- so that individuals with disabilities can participate in civic life.

### **NO GRANDFATHERING, BUT FLEXIBILITY PERMITTED**

The ADA does not allow for the "grandfathering" of pre-existing facilities. It does, however, permit flexibility in how and when access is provided as public resources permit. Specifically, in providing access, local governments are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question, or that would result in undue financial and administrative burdens. This determination can only be made by the head of the public entity or a designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burden would result must be based on all resources available for use in a program. If an action would result in such an alteration or such burdens, a local government must take any other action that it can to ensure that people with disabilities receive the benefits and services of the program or activity. 28 C.F.R. § 35.150(a)(3).

Title II requires city governments to ensure that all of their programs, services, and activities, when viewed in their entirety, are accessible to people

with disabilities. Program access is intended to remove physical barriers to city services, programs, and activities, but it generally does not require that a city government make each facility, or each part of a facility, accessible. For example, each restroom in a facility need not be made accessible as this could be prohibitively costly or physically impossible. Signage, however, directing people with disabilities to alternative accessible features and spaces in a facility should be provided.

In addition to the prior illustration, program accessibility may be achieved in a variety of ways. Local governments may choose to make structural changes to existing facilities to achieve access. But local governments can also pursue alternatives to structural changes to achieve program accessibility. For example, city governments can move public meetings to accessible buildings and can relocate services for individuals with disabilities to accessible levels or parts of buildings. When choosing between possible methods of program accessibility, however, city governments must give priority to the choices that offer services, programs, and activities in the most integrated setting appropriate. All newly constructed local government facilities, however, must be fully accessible to people with disabilities. 28 C.F.R. §§ 35.149, 35.150, 35.151, 35.163.

## **RULES GOVERNING HISTORIC STRUCTURES**

Under ADA regulations, historically significant facilities are defined as those facilities or properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local law. Structural changes to these facilities that would threaten or destroy the historical significance of the property or would fundamentally change the program being offered at the historic facility need not be undertaken.

Nevertheless, a local government must consider alternatives to structural changes in these instances -- including using audio-visual materials to depict the inaccessible portions of the facility and other innovative solutions.

If alterations are being made to a historically significant property, however, these changes must be made in conformance with the ADA Standards for Accessible Design, ("the Standards"), 28 C.F.R. Part 36, § 4.1.7, or the Uniform Federal Accessibility Standards, ("UFAS") § 4.1.7, to the maximum extent feasible. If following either set of standards would threaten or destroy the historical significance of the property, alternative standards, which provide a minimal level of access, may be used.

This decision must be made in consultation with the appropriate historic advisory board designated in the Standards or UFAS, and interested persons should be invited to participate in the decision-making process. 28 C.F.R. §§ 35.150(b)(2); 35.151(d); Standards § 4.1.7; UFAS § 4.1.7. If these lesser standards would threaten or destroy historically significant features, then the

programs or services conducted in the facility must be offered in an alternative accessible manner or location.

## **RULES GOVERNING INSTALLATION OF CURB CUTS**

When streets and roads are newly built or altered, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads. While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements. At existing roads and sidewalks that have not been altered, however, local governments may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Under program access, alternative routes to buildings that make use of existing curb ramps may be acceptable where people with disabilities must only travel a marginally longer route.

One way to ensure the proper integration of curb ramps throughout a municipality is to set a series of milestones for curb ramp compliance in a municipality's transition plan. Milestones are progress dates for meeting curb ramp compliance throughout the municipality. Milestones should occur on a regular basis throughout the course of the transition plan and must reflect a priority to walkways serving government buildings and facilities, bus stops and other transportation services, places of public accommodation, and business

districts, followed by walkways serving residential areas.

It also may be appropriate for a city government to establish an ongoing procedure for installing curb ramps upon request in both residential and nonresidential areas frequented by individuals with disabilities. 28 C.F.R. §§ 35.150(d)(2); 35.151(e). In setting milestones and in implementing a curb cut transition plan for existing sidewalks, the actual number of curb cuts installed in any given year may be limited by the fundamental alteration and undue burden limitations.

## **SELF-EVALUATION & TRANSITION PLANNING**

One important way to ensure that Title II's requirements are being met in municipalities of all sizes is through self-evaluation, which is required by the ADA regulations. Specifically, all local governments were required to complete a self-evaluation of their facilities, programs, policies, and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. Self-evaluations should consider all of a local government's programs, activities, and services, as well as the policies and practices that a city has put in place to implement its various programs and services. Self-evaluation enables local governments to pinpoint the facilities, programs and services that must be modified or relocated to ensure that local governments are complying with the ADA.

Remedial measures necessary to bring the programs, policies, and services into compliance with Title II should be specified -- including, but not

limited to: (1) relocation of programs to accessible facilities; (2) offering programs in an alternative accessible manner; (3) structural changes to provide program access; (4) policy modifications to ensure nondiscrimination; and (5) auxiliary aids needed to provide effective communication. In the case of the Borough of Little Ferry, which employs more than fifty (50) people, it must also develop a transition plan that identifies those changes and sets a schedule for implementing them. Both the self-evaluation and transition plans must be available to the public. 28 C.F.R. §§ 35.105, 35.150(d).

The elements of an acceptable transition plan should contain at a minimum the following:

- 1) A list of physical barriers in a public entities facilities that limit the accessibility of its programs, activities or services to individuals with disabilities.
- 2) A detailed outline of the methods to be utilized to remove these barriers and make the facilities available.
- 3) The schedule for taking the necessary steps to achieving compliance with Title II. If the time period for achieving compliance is longer than 1 year, the plan identified in the interim steps will be taken during each year of the transition plan and;
- 4) The name of the official responsible for the plan's implementation.

## **SECTION 2**

### **Transition Plan Adoption Process**

- Borough Administrator instructed to complete Plan within six (6 months) in August 2011
- Draft Plan presented to Governing Body at the February 7, 2012 Workshop meeting
- Advertising for public comment on Plan
- Formal adoption March 2012 (tentative)

## **SECTION 3**

### **ADA Compliance Officer, Complaint Procedure & Complaint Form**

#### **ACCOMODATION AND ACCESSIBILITY REQUESTS**

The Borough of Little Ferry is committed to providing equal access to all its programs and services in a manner that integrates individuals with disabilities as much as possible. To the greatest extent possible, the Borough will provide meaningful accommodations or access to all of its services, programs, and activities for qualified individuals with disabilities. It is requested that any such requests be made at least forty-eight (48) hours in advance. Individuals requiring any special accommodations that may not be readily available to access Borough programs or services should contact the Borough's ADA Compliance Officer, Michael Capabianco, who may be reached as follows:

Michael Capabianco  
ADA Compliance Officer  
215 – 217 Liberty St  
Little Ferry, NJ 07643

#### **PROCEDURES FOR MAKING ACCESS COMPLAINTS**

Any user of Borough facilities or services who wishes to file a complaint regarding an ADA accommodation or the Borough's alleged failure to provide such accommodation should use the Borough's attached ADA Complaint Form.

## **SECTION 4**

### **Facilities Compliance Plan**

The Facilities Compliance Plan forms the backbone of the Borough's Revised Transition Plan to ensure compliance. The primary purpose of the Transition Plan is to document facility changes necessary to provide adequate access to Borough facilities and programs for disabled individuals. Given current economic conditions and number of Borough facilities in need of barrier removal, not all accessibility improvements can be made at one time, as it would be an extraordinary undue burden on the municipality. Accordingly, a prioritization schedule has been established in conformance with 28 C.F.R. § 35.150(d)(2)(iii).

The Transition Plan is to be posted on the documents section of the Borough's website, to pursue his or her claim through these procedures. This form shall be filed with the Borough's ADA Compliance Officer who shall conduct a preliminary review of the complaint and make a preliminary recommendation to the Borough Administrator regarding how the complaint should be addressed. The Administrator shall then determine what, if any, corrective action may be taken within available resources, and by whom. Within forty-five (45) days of filing, the complainant should be provided an explanation regarding what corrective action has or is being taken, or if none, an explanation as to why.

Complaints regarding inaccessible conditions on private property may also be filed with the Borough's ADA Compliance Officer to forward to the appropriate building and/or zoning officials for examination. These complaints, however, can typically only be addressed by the Borough while such facilities are undergoing construction or renovations prior to the issuance of Certificates of Occupancy, or the release of other bonds or guarantees, that may be held until private facilities are brought into compliance pursuant to their plans filed with the Borough.

Prioritization determinations for making corrective the actions recommended under the Borough's Transition Plan are primarily made based on the availability of financing, the volume of public use at a particular facility and the scale of the barrier. Accordingly, Borough facilities with the greatest public use will be given priority and generally be addressed first as financing is available for making the corrective actions recommended, or acceptable alternatives thereto implemented, to provide adequate accommodations or access to disabled individuals as soon as practically

possible. Aside from curb ramps financed through roadway improvement programs, almost all financing for the Borough's current ADA improvements is made through capital appropriations financed through bonds or notes when they that are adopted.

## **SECTION 5**

### **Maintenance of Accessible Features**

ADA regulations require that once accessible features are installed that they must be properly maintained for continued use by persons with disabilities. 28 C.F.R. § 35.133(a). This includes not only being in proper working order, but also unobstructed by obstacles that would make such facilities or features inaccessible or unusable by individuals with disabilities. These regulations, however, do not prohibit temporary obstructions or isolated instances of mechanical failure due to maintenance or repairs needing to take place. No facilities or feature though should be out of service beyond a reasonable period of time.

To ensure that accessibility facilities or features remain in proper working order, any incidents of malfunctions, failures or repairs being needed should be immediately reported to the Borough's ADA Compliance Officer who shall inform the Department of Public Works of the need for maintenance or repairs. The Department of Public Works should inspect the reported issue and advise the ADA Compliance Officer when such maintenance or repairs shall take place. If additional time will be required as it is a matter that must be handled by an outside contractor, or of the scale where additional funding sources may be required, this shall also be reported to the ADA Compliance Officer so other reasonable accommodations may be made while the facility or feature is out of

service.

Finally, as often as possible inspection of Borough facilities and accessibility features should be made to ensure proper maintenance and repair even in instances where issues may not have been reported. Items in need of maintenance or repair from the annual inspection should be placed on a punch list with anticipated dates of repair being provided to the ADA Compliance Officer. Annual ADA inspections should include, but not necessarily be limited to, an examination of the following:

1. Inspection of exterior pathways and curb cuts at Borough-owned facilities for any surface irregularities that may create accessibility issues due to wear or cracking.
2. Inspection of disabled parking spaces to ensure that appropriately visible signage and markings remain along with the maintenance of access aisles being clear of obstructions and usable.
3. Inspection of all building signage to ensure it remains appropriately visible to direct persons with disabilities to the designated accessible paths of travel.
4. Inspection of door pressures to maintain them as low as possible.
5. Inspection of elevators and chair lifts to ensure property maintenance and working order.
6. Inspection of interior hallways and passage ways to ensure the no objects mounted on the walls protrude more than 4 inches into paths of travel.
7. Inspection of all audible and visual fire alarms and pull stations to be fully operational and in conformance with applicable Fire Code.
8. Inspection of all accessible plumbing fixtures, including toilets, urinals, lavatories, sinks, faucets, showers and drinking fountains to be operational and in compliance with accessibility codes.