

## **COMMON QUESTIONS ABOUT AMERICANS WITH DISABILITIES ACT (ADA)**

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability. The ADA is divided into five titles. Title II of the ADA covers State and local government. This FAQ deals largely with Title II questions but it does include some common questions more appropriate in Title I (employment) and Title III (public accommodation).

### **Local and State Government (Title II)**

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973 for public transportation systems that receive Federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems.

#### **Q. How does title II affect participation in a State or local government's programs, activities, and services?**

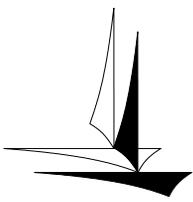
**A.** A state or local government must eliminate any eligibility criteria for participation in programs, activities, and services that screen out or tend to screen out persons with disabilities, unless it can establish that the requirements are necessary for the provision of the service, program, or activity. The State or local government may, however, adopt legitimate safety requirements necessary for safe operation if they are based on real risks, not on stereotypes or generalizations about individuals with disabilities. Finally, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination.

#### **Q. Is a city required to modify its policies whenever requested in order to accommodate individuals with disabilities?**

**A.** No. A public entity must make only "reasonable modifications" in its policies, practices, or procedures to avoid discrimination. If the public entity can demonstrate that a modification would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, where a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district and, in order to install a ramp to the front entrance of a pharmacy, the owner requests a variance to encroach on the set-back by three feet, granting the variance may be a reasonable modification of town policy.

On the other hand, where an individual with an environmental illness requests a public entity to adopt a policy prohibiting the use of perfume or other scented products by its



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employees who come into contact with the public, adopting such a policy is not considered a "reasonable" modification of the public entity's personnel policy.

### **Q: Are there any limitations on the program accessibility requirement?**

**A:** *Yes. A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens.* This determination can only 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 determination that undue burdens would result must be based on all resources available for use in the program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

### **Q. What changes must a public entity make to its existing facilities to make them accessible?**

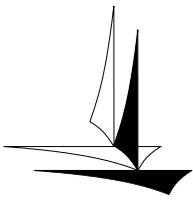
**A.** A public entity must ensure that individuals with disabilities are not excluded from services, programs, and activities because existing buildings are inaccessible. A State or local government's programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to facilities of a public entity that existed on January 26, 1992. Public entities do not necessarily have to make each of their existing facilities accessible. They may provide program accessibility by a number of methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate accessible sites.

### **Q. What architectural design standard must we follow for new construction and alterations?**

**A.** Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). ADAAG is the standard that must be used for privately-owned public accommodations and commercial facilities under title III of the ADA. If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain privately-owned buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator).

### **Q. Does a city have to provide curb ramps at every intersection on existing streets?**

**A.** No. To promote both efficiency and accessibility, public entities 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. Alternative routes to buildings that make use



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of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a marginally longer route. In addition, the fundamental alteration and undue burden limitations may limit the number of curb ramps required.

However, 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. Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance.

### **Q. What kinds of auxiliary aids and services are required by the ADA to ensure effective communication with individuals with hearing or vision impairments?**

**A.** Appropriate auxiliary aids and services may include services and devices such as qualified interpreters, assistive listening devices, note-takers, and written materials for individuals with hearing impairments; and qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.

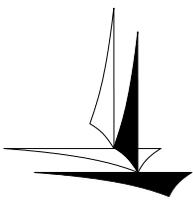
### **Q. Are there any limitations on the ADA's auxiliary aids requirements?**

**A.** Yes. The ADA does not require the provision of any auxiliary aid that would result in an undue burden or in a fundamental alteration in the nature of the goods or services provided by a public accommodation. However, the public accommodation is not relieved from the duty to furnish an alternative auxiliary aid, if available, that would not result in a fundamental alteration or undue burden. Both of these limitations are derived from existing regulations and case-law under section 504 of the Rehabilitation Act and are to be determined on a case-by-case basis.

### **Q. Does the requirement for effective communication mean that a city has to put all of its documents in Braille?**

**A.** Braille is not a "required" format for all documents. A public entity must ensure that its communications with individuals with disabilities are as effective as communications with others.

A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication. Examples of auxiliary aids and services that benefit various individuals with vision impairments include magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or assistance in locating items. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.



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For example, for individuals with vision impairments, employees can often provide oral directions or read written instructions. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of magnifying lenses, qualified readers, taped texts, audio recordings, Brailled materials, or large print materials.

### **Q. Does a city have to arrange for a sign language interpreter every time staff members deal with people who are deaf or hard of hearing?**

**A.** Sign language interpreters are not required for all dealings with people who are deaf or hard of hearing. A public entity is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication.

Examples of auxiliary aids and services that benefit individuals with hearing impairments include qualified interpreters, note-takers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, and exchange of written notes.

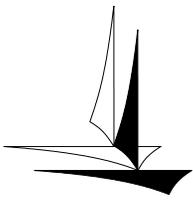
The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

For example, employees can often communicate with individuals who have hearing impairments through written materials and exchange of written notes. In many simple transactions, such as paying bills or filing applications, communications provided through such simple methods will be as effective as the communications provided to other individuals in similar transactions.

Many transactions, however, involve more complex or extensive communications than can be provided through such simple methods and may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

### **Q. Do all city departments have to have TDD's to communicate with people who have hearing or speech impairments?**

**A.** No. Public entities that communicate by telephone must provide equally effective communication to individuals with disabilities, including hearing and speech impairments. If telephone relay services, such as those required by title IV of the ADA, are available, these services generally may be used to meet this requirement.



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Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where such services are available, public employees must be instructed to accept and handle relayed calls in the normal course of business.

However, State and local agencies that provide emergency telephone services must provide "direct access" to individuals who rely on a TDD or computer modem for telephone communication. Telephone access through a third party or through a relay service does not satisfy the requirement for direct access.

### **Q. Are there any limitations on a public entity's obligation to provide effective communication?**

**A.** Yes. This obligation does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

### **Q. What is the minimum width required for accessible routes?**

**A.** An accessible route of travel should maintain a minimum width of 36 inches, except for where furniture or other obstructions can reduce the width to 32 inches for a maximum distance of 24 inches. Accessible routes less than five feet wide should have passing spaces of at least five feet by five feet located at intervals not exceeding 200 feet.

### **Q. What is the minimum width required for doorways?**

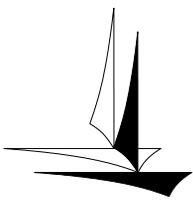
**A.** Accessible doorways must maintain a minimum width of 32 inches of clear space with the door in a 90 degree open position. (Exception: doors not requiring passage, such as shallow closets, may have clear openings of 20 inches minimum).

### **Q. Does title II cover a public entity's employment policies and practices?**

**A.** Yes. Title II prohibits all public entities, regardless of the size of their work force, from discriminating in employment against qualified individuals with disabilities. In addition to Title II's employment coverage, Title I of the ADA prohibits employment discrimination against qualified individuals with disabilities by state and local government entities.

### **Q. How will the ADA's requirements for Minneapolis be enforced?**

**A.** Individuals may file ADA complaint with the City's ADA Title I or Title II Coordinators. In addition, individuals can file a complaint directly with the US Department of Justice.



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## Public Accommodations (Title III)

### **Q. What are public accommodations?**

**A.** A public accommodation is a private entity that owns, operates, leases, or leases to, a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers. Private clubs and religious organizations are exempt from the ADA's title III requirements for public accommodations.

### **Q. Will the ADA have any effect on the eligibility criteria used by public accommodations to determine who may receive services?**

**A.** Yes. If a criterion screens out or tends to screen out individuals with disabilities, it may only be used if necessary for the provision of the services. For instance, it would be a violation for a retail store to have a rule excluding all deaf persons from entering the premises, or for a movie theater to exclude all individuals with cerebral palsy. More subtle forms of discrimination are also prohibited. For example, requiring presentation of a driver's license as the sole acceptable means of identification for purposes of paying by check could constitute discrimination against individuals with vision impairments. This would be true if such individuals are ineligible to receive licenses and the use of an alternative means of identification is feasible.

### **Q. Will businesses need to rearrange furniture and display racks?**

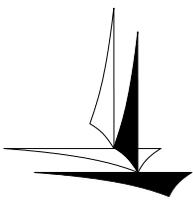
**A.** Possibly. For example, restaurants may need to rearrange tables and department stores may need to adjust their layout of racks and shelves in order to permit access to wheelchair users.

### **Q. Will businesses need to install elevators?**

**A.** Businesses are not required to retrofit their facilities to install elevators unless such installation is readily achievable, which is unlikely in most cases.

### **Q. Who has responsibility for ADA compliance in leased places of public accommodation, the landlord or the tenant?**

**A.** The ADA places the legal obligation to remove barriers or provide auxiliary aids and services on both the landlord and the tenant. The landlord and the tenant may decide by lease who will actually make the changes and provide the aids and services, but both remain legally responsible.



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### **Q. Does the ADA cover private apartments and private homes?**

**A.** The ADA does not cover strictly residential private apartments and homes. If, however, a place of public accommodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

### **Q. What are the ADA's requirements for public transit buses?**

**A.** The Department of Transportation has issued regulations mandating accessible public transit vehicles and facilities. The regulations include requirements that all new fixed-route, public transit buses be accessible and that supplementary paratransit services be provided for those individuals with disabilities who cannot use fixed-route bus service. For more information contact Metro Transit and or Minnesota Department of Transportation.

### **Q. What does the ADA require in new construction?**

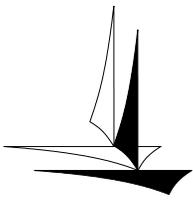
**A.** The ADA requires that all new construction of places of public accommodation, as well as of "commercial facilities" such as office buildings, be accessible. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

### **Q. Must every feature of a new facility be accessible?**

**A.** No, only a specified number of elements such as parking spaces and drinking fountains must be made accessible in order for a facility to be "readily accessible." Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible.

### **Q. What are the ADA requirements for altering facilities?**

**A.** All alterations that could affect the usability of a facility must be made in an accessible manner to the maximum extent feasible. For example, if during renovations a doorway is being relocated, the new doorway must be wide enough to meet the new construction standard for accessibility. When alterations are made to a primary function area, such as the lobby of a bank or the dining area of a cafeteria, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area must also be made accessible. These additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. Elevators are generally not required in facilities under three stories or with fewer than 3,000 square feet per floor, unless the building is a



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shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

**Q. Does the ADA permit an individual with a disability to sue a business when that individual believes that discrimination is about to occur, or must the individual wait for the discrimination to occur?**

**A.** The ADA public accommodations provisions permit an individual to allege discrimination based on a reasonable belief that discrimination is about to occur. This provision, for example, allows a person who uses a wheelchair to challenge the planned construction of a new place of public accommodation, such as a shopping mall, that would not be accessible to individuals who use wheelchairs. The resolution of such challenges prior to the construction of an inaccessible facility would enable any necessary remedial measures to be incorporated in the building at the planning stage, when such changes would be relatively inexpensive.

**Q. How will the public accommodations provisions be enforced?**

**A.** Individuals may file complaints with the US Department of Justice.

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*The City of Minneapolis invites and encourages participation by every resident to each program, service and event within our city. Should you require an accommodation in order for you to fully participate, or should you require this document in a different format, please let us know by contacting 612-673-3737 or TTY: 612-673-2157, at least 5 days prior to the meeting.*