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Transition Plans for Your Community

Accessibility for People with Disabilities

A Step toward Continuing Compliance with the
Americans with Disabilities Act and the
Rehabilitation Act

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PURPOSE OF THIS BROCHURE

This brochure will provide information to assist local governments in improving accessibility and complying with the Americans with Disabilities Act by conducting a self-evaluation for accessibility and updating their “transition plans.” Most local communities in the Chicago region are required by the Americans with Disabilities Act (ADA) and/or the Rehabilitation Act to have a transition plan. Many communities addressed the requirement when the ADA was passed in 1992, but may not have updated the self-evaluation or plans since then, as may be required by regulations. Indeed, only about 54 municipalities in the region had up-to-date transition plans in 2010, down from 60 in 2002.¹

The process of self-evaluation for accessibility and updating a transition plan can help communities sort through and prioritize issues, leading to changes that can help people with disabilities. In the long run, improving accessibility at the local level may reduce some (but not all) of the need for door-to-door paratransit demand-response services, and increase the level of independence for some people now needing such services. In addition, developing and implementing a transition plan can be a valid defense in ADA-related legal actions. However, when there is no up-to-date plan, and there are inaccessible programs or facilities, a community is vulnerable to court action, including injunctive relief and attorneys’ fees.

Accessibility brings benefits not only for people with disabilities, but for the community at large. For example, following guidance for public right-of-way accessibility will bring about a more walkable, attractive, and livable community. Indeed, a community that wants to improve walkability is strongly advised to start by following the process to improve accessibility outlined in the pages that follow, including a focus on the public right-of-way accessibility guidance published by the U.S. Access Board.²

This brochure will provide a base of information which communities can use to update their transition plan. It is not legal advice, but is meant as a planning guide.

WHAT ARE TRANSITION PLANS?

An evaluation and plan for physical improvements to address accessibility.

Self-evaluations and transition plans are required by federal regulations to implement Title II of the ADA.³ Regulations implementing Section 504 of the Rehabilitation Act require self-

¹ CMAP 2010 Municipal Plans Programs, and Operations Survey; Chicago Area Transportation Study 2002 Soles and Spokes Municipal Survey.

² <http://www.access-board.gov/prowac/index.htm>. A full list of reference materials to assist local communities in providing accessibility for people with disabilities is at <http://www.cmap.illinois.gov/bike-ped/accessibility>.

³ 42 U.S.C. §§ 12131-12164

evaluations for recipients of federal financial assistance.⁴ Regulations implementing the ADA require transition plans. Title II requires state and local governments to make their programs and services accessible to persons with disabilities. Section 504 prohibits discrimination against people with disabilities for programs or activities receiving federal financial assistance, and prohibits exclusion or denial of benefits for such programs and activities based solely on disability. The process to develop a self-evaluation and transition plan ensures that a community identifies barriers to accessibility, prioritizes actions to address the barriers, and sets forth a schedule for those actions.

WHO SHOULD DEVELOP TRANSITION PLANS?

All government entities must develop self-evaluations; entities with 50 or more employees (either full- or part-time) must develop transition plans.

Transition plans are required by federal regulations for public entities with 50 or more employees, if the public entities require structural changes to achieve program accessibility.⁵ Both full-time and part-time employees count toward the 50-employee level.⁶

Self-evaluations are required for all government entities covered by the ADA. Self-evaluations are also required by Section 504 of the Rehabilitation Act for all entities receiving federal financial assistance, including federal highway aid for transportation projects.

WHEN SHOULD TRANSITION PLANS BE DEVELOPED?

If you haven't developed a transition plan, but one is required, you should develop the plan as soon as possible. Adopted transition plans should be periodically updated.

Affected governments were required to complete ADA transition plans in 1992. A system for periodically reviewing and updating the evaluation is strongly recommended, and is required for federal-aid recipients.⁷

Generally, updates should be completed to reflect new guidance and standards, though there are some "safe harbor" provisions for recent construction that met 1992 standards.⁸ Recent guidance and standards include accessibility standards that were updated in 2010; the new standards became effective in 2012. Public right-of-way accessibility guidance has been updated several times recently, including proposed final rules released in 2011. Also, the Federal Highway Administration and the Illinois Department of Transportation have revised

⁴ 29 U.S.C. §794

⁵ The requirements of the ADA apply to all public entities or agencies, no matter the size. The transition plan formal procedures as outlined in 28 C.F.R. section 35.150 only govern those public entities with more than 50 employees.

⁶ Disability Rights Bureau, Illinois Attorney General's Office, personal communication.

⁷ 49 CFR 27.11 (c)(2)(v)

⁸ 28 CFR 35.150 (b)(2)

procedures on such design specifications as truncated domes. Therefore, most communities should update their transition plans now, if their plans have not recently been updated to reflect the latest guidance and standards.

TO WHICH FACILITIES DOES THE TRANSITION PLAN REQUIREMENT APPLY?

Existing facilities identified during the self-evaluation as requiring physical changes to provide accessibility, and pedestrian facilities.

If a program self-evaluation determines that physical changes to existing facilities are necessary, those changes must be included in the transition plan. In addition, pedestrian facilities must be included in the transition plan for agencies with jurisdiction over streets or walkways. While the federal regulations specifically mention curb ramps, the broader spectrum of pedestrian facilities have been ruled by courts to be a program that is subject to accessibility regulations.⁹ Pedestrian facilities might include crosswalks, curb ramps and level landings, pedestrian pushbuttons and signal indications (including accessible pedestrian signals, where appropriate), sidewalks, bus stops, and driveway crossings.

Some provision is made for historic preservation, but this provision does not change the basic requirement for program accessibility.¹¹

Rail transit stations are subject to a special planning process that identifies key stations for accessibility. Consultation with transit agencies is suggested when considering accessibility requirements for transit stations in your community.

HOW DOES A GOVERNMENT DEVELOP A TRANSITION PLAN?

Identify the official responsible for developing and implementing the plan; establish a complaint procedure; adopt design standards; engage the community; develop a self-evaluation that includes necessary physical changes; prioritize physical changes; schedule physical changes; maintain documentation; make the self-evaluation and transition plan documents available for the public.

1. *Identify the official responsible for developing and implementing the plan.* A responsible employee is required to be identified for complying with the ADA and for investigating complaints.¹² A single point of contact with excellent management and organizational skills will be very helpful in coordinating the development and implementation of the

⁹ 28 CFR 35.150; *Barden v. City of Sacramento*, 292 F. 3d 1073 - Court of Appeals, 9th Circuit 2002. The position that public sidewalks are a service, program, or activity of a municipality subject to Title II of the ADA was supported by Theodore B. Olson, Solicitor General in a Supreme Court brief as amicus curiae, <http://www.justice.gov/osg/briefs/2002/2pet/6invit/2002-0815.pet.ami.inv.pdf> (the Supreme Court denied Sacramento's petition for a writ of certiorari after the City of Sacramento settled with *Barden et al.*)

¹¹ 28 CFR 35.150(b)(3)

¹² 28 CFR 35.107(a)

plan, since the transition process will usually need to identify programmatic and physical changes over a number of departments, and may require substantial compromise among competing interests. The point of contact should be either cognizant of engineering challenges associated with accessibility, including applicable design standards, or should establish a close working relationship with the staff or consulting engineer who is cognizant. The person responsible for implementing the plan must be identified within the plan.¹³

In addition, Illinois statutes also govern the identification of an ADA coordinator for municipalities. Each municipality must post the name, office address, and phone number of its ADA coordinator on the municipal web site or, if there is no municipal web site, must publish the information every two years in either a newsletter mailed to residents or in a newspaper of general circulation.¹⁴

2. *Establish a complaint procedure.* A procedure to identify program access issues, and to resolve the issues, must be adopted and published¹⁵ and will be helpful in establishing priorities. As with the ADA coordinator, Illinois statutes govern the publication of grievance procedures.¹⁶ These statutes require that the grievance procedures must be published on the municipal web site. If there is no municipal web site, information about how to obtain the procedures must be published every two years in either a newsletter mailed to residents or in a newspaper of general circulation

3. *Identify, adopt, and understand applicable design standards and guidelines.*¹⁷ This is perhaps the most technically challenging element of the process for planning for accessibility for large organizations like cities and villages. Technical guidance from an experienced engineer or architect is recommended. There are a large number of guidance documents and standards to sort through, so it is important that the most recent applicable guidance and standards be used for the problem at hand.¹⁸

¹³ 28 CFR 35.150(d)(iv)

¹⁴ 65 ILCS 5/1-1-12

¹⁵ 28 CFR 35.107(b)

¹⁶ 65 ILCS 5/1-1-12

¹⁷ Kevin Burke, Illinois Department of Transportation, Presentation to the Council of Mayors Executive Committee, May 2012.

¹⁸ A compendium of design information is at <http://www.cmap.illinois.gov/bike-ped/accessibility>.

4. *Engage the community.* Individuals with disabilities, organizations representing people with disabilities, and other interested individuals should have the opportunity to participate in the development of the self-evaluation and the transition plan. Although it is not necessary, a consultant to assist the plan may be helpful if the firm has extensive successful experience engaging with the community, including people with disabilities. An alternative is to form a committee or task force that includes individuals and stakeholder organizations to provide advice on the plan. A list of the persons consulted must be kept for record-keeping as part of the self-evaluation process.¹⁹

5. *Prepare the self-evaluation.*
 - a. *Identifies barriers to accessibility.* The government entity should review its “services, policies, and practices, and the effects thereof” to determine whether there are barriers to participation by people with disabilities.²⁰ This process should include the identification of existing and planned accessible paths of travel for public facilities and programs to facilitate prioritization later in the process.

For agencies with “responsibility or authority over streets, roads and walkways,” the transition plan must include curb ramps ²¹ and other pedestrian facilities, so the self-evaluation should do so as well. Some curb ramps, sidewalks, pedestrian signals, driveway crossings, and other pedestrian facilities may need to be reviewed for compliance with recent design standards. For example, specific items for curb ramps that may need review for existing ramps include the appropriate detectable warnings, slopes, level landings, and algebraic slope changes from the ramp to the street surface.

- b. *Describe how the barriers to accessibility will be addressed.* Barriers may be overcome by a number of means, only some of which involve physical improvements. Title II regulations specifically provide that

a public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with

¹⁹ 28 CFR 35.105(c)(1)

²⁰ 28 CFR 35.105(a)

²¹ 28 CFR 35.150(d)(2)

*disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.*²²

Many of these solutions do not provide “universal access,” but may be an alternative when financial constraints do not allow universal access in the short term. Financial or programmatic considerations may be considered in rejecting proposed physical improvements, so long as the selected alternative ensures the benefits or services for people with disabilities.²³

Recipients of federal aid, including highway and transit assistance, are required to develop a system for periodically reviewing and updating the self-evaluation.²⁴

Required physical improvements identified in the self-evaluation are carried forward to the transition plan itself.

6. *Develop a Transition Plan to set out the priority, cost, and schedule for physical improvements.* A transition plan is required by ADA regulations to address the physical changes to existing facilities identified as being necessary in the self-evaluation. The plan can begin by carrying over those physical obstacles and detailed recommended physical improvements from the self-evaluation. The plan must then include the schedule for physical improvements, including the programmed year for each improvement.²⁵ Good practice will also include a budget for each year and an estimated cost for each improvement; assistance by an experienced engineer or architect is recommended for this step. The plan should also identify the person responsible for carrying out the details of the plan, as noted in Step 1, above.²⁶

The transition plan will typically include physical improvements for both public buildings and the public right-of-way (streets, walkways, etc.); some communities have developed separate plans for buildings and right-of-way.²⁷ As noted above, a transition plan must include a schedule for curb ramps, and must address sidewalk accessibility in general.²⁸ *Priority* should be given to curb ramps and sidewalks for identified accessible paths of travel to employment sites and public facilities, including “state and local

²² 28 CFR 35.150(b)(1)

²³ 28 CFR 25.150(a)(3)

²⁴ 49 CFR 27.11

²⁵ 28 CFR 35.150(3)(iii)

²⁶ 28 CFR 35.150(3)(iv)

²⁷ Such a division of plan products may facilitate an efficient division of labor between architects and professional engineers.

²⁸ Since courts have ruled that sidewalks are a service, program, or activity of a municipality subject to Title II of the ADA, municipalities must maintain program accessibility for all sidewalks, not just identified accessible paths of travel. *Barden v. City of Sacramento*, 292 F. 3d 1073 - Court of Appeals, 9th Circuit 2002.

government offices and facilities, transportation, places of public accommodation, and employers,”²⁹ but all inaccessible sidewalks need to be addressed.

Developing a transition plan that improves public right-of-way accessibility will result in a walkable, more livable community, benefiting all residents and businesses. Examples of both plans that address public right-of-way accessibility and sidewalk accessibility checklists for self-evaluations are posted at <http://www.cmap.illinois.gov/bike-ped/accessibility>.

The plan’s implementation should be closely monitored. This should be documented, and should feed into updates of the self-evaluation and plan.

Federal regulations require that recipients of federal aid update their self-evaluation periodically. Because these processes are closely related, this means that the transition plan will also be periodically updated.

7. *Maintain documentation.* Regulations require that documentation of the transition plan process be maintained. Specific documentation requirements, some of which are noted above, include the following:
 - a. The name and contact information for the person responsible for implementing the plan (see step 1)
 - b. Adopted and published complaint procedures (see step 2)
 - c. For the self-evaluation, recipients of federal aid and all government entities with more than 50 employees should have a list of persons consulted, areas examined, problems identified, modifications made, and remedial steps taken.³⁰ These shall be available for three years following the completion of the self-evaluation.³¹
 - d. “A copy of the transition plan shall be made available for public inspection.”³²

MORE INFORMATION

Key resources for accessibility and transition plans are available through federal agencies:

- Department of Justice: www.ada.gov
- Access Board: www.access-board.gov
- Federal Highway Administration <http://www.fhwa.dot.gov/civilrights/programs/ada.htm>.
- Federal Transit Administration: http://fta.dot.gov/civil_rights.html

Additional information and resources on regulations, design guidance, and implementation is posted at <http://www.cmap.illinois.gov/bike-ped/accessibility>. The resources include sample plans and public right-of-way accessibility checklists.

²⁹ 28 CFR 35.150(d)(2). Emphasis added.

³⁰ 49 CFR 27.11(c) and 28 CFR 35.105 (c)

³¹ Ibid.

³² 28 CFR 35.150(d)(1)