



CITY OF KIRKLAND
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MEMORANDUM

To: Kurt Triplett, City Manager

From: James Lopez, Director of Human Resources and Performance Mgmt.
Kathy Joyner, Safety/ Risk Analyst
Ray Steiger, Streets Division Manager
Rod Steitzer, Capital Projects Supervisor

Date: May 22, 2014

Subject: American with Disabilities Act Update to Council

RECOMMENDATION

That the Council receives an update on the American with Disabilities Act (ADA) as both the federal and state governments are giving ADA compliance renewed focus which has potentially significant financial impacts to the City. The staff recommendation is that the City moves forward with several American with Disabilities Act initiatives, including the potential submission of funding requests (if necessary) for consideration in the 2015/2016 budget, with the intention of completing a City wide ADA Transition Plan by the end of the 2016. This memorandum also provides a brief overview of the ADA and a summary of what the City is currently doing to be compliant with the Act.

BACKGROUND

The ADA provides comprehensive civil rights protections to persons with disabilities in the areas of employment, state and local government services, and access to public accommodations, transportation and telecommunications. The ADA was adopted in 1990 and 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 protects employees with disabilities by requiring employers to make reasonable accommodation for applicants and employees with disabilities.

As such, in order meet our obligations under law, the City of Kirkland and other public agencies are required to evaluate policies, programs, and services and to identify barriers under the ADA. Public agencies are further required to develop and have available to the public an ADA "Transition Plan" that provides for the means and timeframe to be compliant with Title II of the act.

The ADA is divided into five parts, covering the following areas:¹

Title I: Employment

Under Title I, employers, including governmental agencies, must ensure that their practices do not discriminate against persons with disabilities in the application, hiring, advancement, training, compensation or discharge of an employee, or in other terms, conditions and rights of employment.

Title II: Public Services

Title II prohibits state and local governments from discriminating against persons with disabilities or from excluding participation in or denying benefits of programs, services or activities to persons with disabilities. It is under this Title that the ADA Transition Plan is prepared. The ADA Transition Plan is intended to outline the methods by which physical or structural changes will be made to affect the non-discrimination policies described in Title II.

Title III: Public Accommodations

Title III requires places of public accommodation to be accessible to and usable by persons with disabilities. The term public accommodation as used in the definition often is misinterpreted as applying to public agencies, but the intent of the term is to refer to any privately funded and operated facility serving the public.

Title IV: Telecommunications

Title IV covers regulations regarding private telephone companies, and requires common carriers offering telephone services to the public to increase the availability of interstate and intrastate telecommunications relay services to individuals with hearing and speech impairments.

Title V: Miscellaneous Provisions

Title V contains several miscellaneous regulations, including construction standards and practices, provisions for attorney's fees and technical assistance provisions.

While the ADA has five separate titles, Title II is the section specifically applicable to "public entities" (state and local governments) and the programs, services, and activities they deliver. As noted above, Title II of the ADA states no qualified person with a

¹ http://www.ada.gov/ada_intro.htm;
http://en.wikipedia.org/wiki/Americans_with_Disabilities_Act_of_1990)

disability may be excluded from participating in, or denied the benefits of, programs, services, and activities provided by state and local governments because of a disability.

Since 1999 the Department of Justice had engaged in over 200 settlement agreements with 192 localities in all 50 states, the District of Columbia, and Puerto Rico. As noted on the DOJ website “[i]n most of these matters, the compliance reviews were undertaken on the Department’s own initiative under the authority of [T]itle II and, in many cases, [S]ection 504 of the Rehabilitation Act of 1973 because the governments receive financial assistance from the Department and are prohibited by the Act from discriminating on the basis of disability.”²

In addition to those investigations undertaken as a result of DOJ’s own initiative, complaints resulting in compliance reviews and sanctions can vary from state initiated investigations to citizen complaints.

In 2013, the Washington State Department of Transportation (WSDOT) adopted a new chapter in the Local Agency Guidelines (LAG) manual specifically identifying how agencies must go about being compliant with the transportation related requirements of Title II. The LAG manual contains requirements for agencies utilizing State and Federal funding, and Kirkland’s role as a Certifying Agency City (ability to administer our own projects and programs) includes the requirement that the LAG manual will be complied with. Further, based on a national trend, WSDOT will begin requiring that agencies using any Federal funding (i.e. grants through WSDOT) have and are able to present their ADA Transition Plan.

Since the inception of federal legislation addressing disability issues (Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Section 504) the City has engaged in many activities to achieve compliance with the federal laws. For example, in the 1990’s and again in 2002-2004, the Public Works Department successfully applied for Federal Community Development Block Grant (CDBG) funds through King County and completed a number of ADA compliant wheelchair ramp upgrades at a number of locations throughout the City. Improvements through the CDBG resources amounted to nearly \$300,000 on curb ramp upgrades. Similarly, in 1996 the City made upwards of \$40,000 in ADA upgrades to the Kirkland Senior Center improving restrooms and access to the facility.

Known ADA deficiencies within the public right of way are also addressed and corrected through the Capital Improvement Program. Specific capital projects that provide ADA upgrades include the Annual Sidewalk Maintenance Project and the biennial Crosswalk Upgrade Program. Transportation, street, non-motorized, and utility projects that impact existing noncompliant pedestrian improvements, or have opportunities for pedestrian improvements where none exist within the project limits usually require ADA upgrades. Grant related programs that provide for ADA upgrades through specific projects include Safe Route to Schools and Congestion Mitigation and Air Quality.

² <http://www.ada.gov/civicfac.htm>

The City has also crafted a process to handle requests from the general public for sign language, oral, and cued speech interpreters. In 2010, the Human Resources Director was appointed as the City's ADA Coordinator—a mandated position under the Act—and a grievance procedure was established for our Court. The City is currently in the process of applying the procedure designed for the Court to the entire government and will be posting an enterprise-wide ADA Notice and Grievance Procedure on our City website and at all City facilities shortly.

RECENT DEVELOPMENTS

Before outlining how the City of Kirkland is organized to move forward to meet our obligations under the Act, a brief summary of recent ADA-related developments, particularly in the area of transportation, highlight the importance of acting expeditiously to coordinate future ADA compliance efforts. In both of the examples below, required ADA compliance directives came after projects were designed, funded and either complete or well under way. Traditionally such changes would only occur on new projects at the time grant money is awarded.

WSDOT Sidewalk Ramp Example

On June 1, 2011, the City executed a contract with Pellco Construction Inc. for the construction of a project to improve the infrastructure around seven elementary schools in Kirkland. Specifically project work included connecting sidewalks by constructing curb, gutter, sidewalk, and storm drainage improvements to the seven schools. The Project, which was funded in part by a \$498,000 state grant, was completed on November 30, 2011 and accepted by the City on February 7, 2012.

However, on September 19, 2013, long after the close-out of the project, WSDOT Local Programs performed a field review of the work and identified what WSDOT concluded were deficiencies at approximately 80% of the locations that included ADA curb ramps and landings, cross slopes, and driveway ramps. Kirkland staff subsequently visited each site with WSDOT and re-measured and the number of non-compliant sites was reduced to about 25% of the locations.

Kirkland staff have completed a draft correction plan and are working with WSDOT Local Programs for plan approval. The plan includes a correction schedule, outreach, and reporting.

The exact cost to correct the deficiencies is not know at this time, however, the City is seeking indemnification for the deficient work from the contractor and consulting inspector. City staff may also need to request additional funding from the Council to correct any remaining deficiencies not fully indemnified.

FHWA APS Example

Another example is that the older-style 'audible' pedestrian signals have recently been determined by the Federal Highway Administration (FHWA) to no longer satisfy current ADA and Manual on Uniform Traffic Control Devices (MUTCD) requirements for pedestrian signal systems. FHWA now requires Accessible Pedestrian Signals and Pushbuttons (APS). APS is an integrated system that improves a signal's communication to pedestrians by providing visual, audible, and vibrotactile indications for users to cross a street at a signalized intersection.

The Federal Highway Administration (FHWA) now requires State Department of Transportations (DOTs) and local agencies to develop and follow a reasonable and consistent policy for addressing APS in the public right of way.

Kirkland's Intelligent Transportation System (ITS) Phase I and Phase II projects both received federal dollars. Both Phases were approved, designed, and in the process of implementation. FHWA and WSDOT originally informed Kirkland that the City would need to redesign the two ITS Phases and install APS. This would have increased the cost of Phase I by \$250,000 and the cost of Phase II by over \$500,000. Neither cost increase would be covered by the ITS grants. Kirkland CIP staff have worked with FHWA and WSDOT to modify the requirement with a Transition Plan since the change came after the ITS projects were designed and under implementation.

The new Transition Plan will include an APS policy (plan and schedule) that describes when existing pedestrian signals systems will be upgraded to accessible pedestrian signals and pedestrian pushbuttons.

The cost associated with APS upgrades can vary with type of upgrade and existing conditions. For signalized intersections, the cost ranges from \$50,000 to \$75,000. Costs are minimized with existing ADA compliant sidewalks and ramps, where the need for sidewalk and ramp upgrades, or the addition of pedestrian signal poles cause an increase in cost. For mid-block crossings, the cost ranges from \$30,000 to \$100,000. The feasible use of solar powered units with existing ADA compliant sidewalks and ramps minimize costs, where need for electric power and no existing improvements cause an increase in cost.

The purpose of highlighting these two examples is to show the Council how ADA compliance requirements are now receiving a renewed emphasis by the state and federal governments. Those governments set the rules, and the rules are changing in ways that can have significant cost impacts on City transportation projects moving into the future.

CITY OF KIRKLAND ADA IMPLEMENTATION TEAM

In response to this renewed ADA focus, in April of 2014 the City organized and convened an interdepartmental ADA implementation team ("Implementation Team") to ensure a comprehensive and timely approach toward addressing our responsibilities under the ADA. The Implementation Team now meets once a month and has representatives from each

department including several from Public Works given that departments' exposure to ADA concerns.

The goal of the team is to develop and implement a work plan to ensure compliance with the ADA. The City's work plan consists of two critical functions: 1) programmatic self-evaluation and 2) the development and eventual implementation of a Transition Plan. Importantly, as noted above, over the years the City has made important improvements to how it addresses ADA issues. The work of the Implementation Team builds on those efforts.

Essentially, programmatic self-evaluation provides the City with the information necessary to develop a Transition Plan. The self-evaluation will guide the City in determining if there are any existing barriers that may prevent qualified people with a disability from participating in any of the programs, services, and activities provided by the City. Title II also mandates that the City provide opportunities to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments. The Implementation Team is looking at different options for involving interested individuals and organizations to participate. The team has also developed several checklists as a reference for compliance against core areas of concern. These areas include:³

- **General Effective Communication:** The City is required take steps to ensure that our communications with people with disabilities are as effective as communications with others.
- **Website Accessibility:** The City must provide qualified individuals with disabilities equal access to our programs and services.
- **Program Access:** The City of Kirkland must ensure that individuals with disabilities are not excluded from services, programs, and City sponsored activities.
- **Public Right of Way Elements/City Buildings/Trials/Parks:** Title II of the ADA requires the City to make its public right of way elements accessible by ensuring infrastructure such as, but not limited to trails, parks, buildings, streets, pedestrian crossings, sidewalks and ramps are accessible to people with disabilities.
- **Emergency Management:** Our Emergency Management programs, services, activities, and facilities must be accessible to people with disabilities.

The Transition Plan will be developed to implement changes identified in the self-evaluation process. The Transition Plan will include, but not be limited to the following items:

³ <http://www.ada.gov/pcatoolkit/toolkitmain.htm>

- A schedule for providing Accessible Pedestrian Systems (APS), curb ramps or other sloped areas where pedestrian walkways cross curbs, giving priority to walkways serving entities covered by the ADA, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.
- A report identifying the physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities and describe the methods that will be used to make the facilities accessible.
- A schedule for taking the steps necessary to achieve compliance with the ADA and, if the time period of the ADA Transition Plan is longer than one year, identify steps that will be taken during each year of the transition period.
- A description for how to respond to public requests for APS at specific locations.

Finally, the City is evaluating the costs of developing a Transition Plan. Staff recommends that the Council support moving forward with the ADA initiatives outlined above as well as potential submission of funding requests (if necessary) for consideration in the 2015/2016 budget, with the intention of completing a City wide ADA Transition Plan by the end of the 2016.

After the Transition Plan is completed, the Implementation Team will conduct periodic reviews to ensure ongoing compliance with ADA requirements.