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CITY OF GOODLETTSVILLE, TENNESSEE ACCESS AUDIT

PROGRAM AND POLICY REPORT MARCH 2, 2018

Introduction

The City of Goodlettsville, pursuant to an RFP process, retained the WT Group, LLC Accessibility Practice to conduct an access audit. An access audit is required by the US Department of Justice (DOJ) title II regulation. The regulation implements the Americans with Disabilities Act (ADA).

We began our work in December of 2017. Our reports have been completed for some time. The project manager for the City transitioned when Addam McCormick took another position, and our contact is now Amy Mitchell, the Director of the City of Goodlettsville Parks and Recreation Department.

Scope of Work

Our scope of work was broad. We evaluated every existing City site and facility, policies regarding interaction with the public, and the ways in which City staffs provide modifications in programs for people with disabilities. We also evaluated City sidewalks and curb ramps.

In our work, we contrasted City assets to federal requirements, state requirements, and smart practices. Those reference standards included:

- the federal 2010 Standards for Accessible Design;
- the federal Public Right-of-Way Accessibility Guidelines (PROWAG); and
- any Tennessee requirements that are more stringent than federal requirements.

Our site reports have been provided digitally to the City. Our site reports identify the deficits and make specific recommendations for retrofit.

This report addresses our review of City public-facing policies, as well as how City staffs provide supports for persons with disabilities who seek participation. We review our methodology, the title II policy and program requirements, and provide recommendations to the City.

Methodology for Policy and Program Review

Our policy and program team includes John McGovern and Shelley Zuniga. McGovern is the Partner and Practice Leader for the WT Group Accessibility Practice, and Zuniga is Vice President of the Practice. McGovern has a law degree, to complement his more than 30 years working in local government. Zuniga also worked in local government.

Her career experience is complemented by her status as a Certified Access Specialist (CASP), Certified ADA Coordinator, and a Certified Therapeutic Recreation Specialist (CTRS).

In December of 2017, we interviewed staffs at the City office and at the Delmas Long Community Center. The purpose of the interviews was to gain an understanding of the scope of work of the staffs, learn how they receive and evaluate requests for modifications due to disability, and learn what experience they have in making reasonable modifications.

We also gathered some policy and program materials at Parks and Recreation. We then contrasted the forms and our interviews with the title II requirements. For Parks and Recreation, we applied the eight-step inclusion process used by cities across the country for three decades. This process is easily adapted to other City services too, as you will note in our recommendations.

We also understand that enforcement actions color the way in which the City develops policies and provides programs. In this report, we have incorporated references to court and administrative decision guidance, as well as US Department of Justice (US DOJ) technical assistance recommendations.

As a matter of course, we also recommend smart practices to the City. Smart practices are techniques or processes that make City sites, facilities, policies, and programs more readily useable by people with disabilities.

Smart practices exceed the minimum requirements. In our experience, cities that embrace the ADA and exceed the minimum requirements are more likely to meet not just the letter, but intent of the ADA. Our intention is to do all we can to assure that the City adopts this approach.

Title II ADA Requirements

The portion of the ADA that applies to the City is title II. The City can find the US DOJ regulation implementing the statutory requirements at 28 CFR Part 35, or [here](#). While the regulation certainly has some gray areas, much of it is in black-and-white language. We highlight below some of the key provisions of title II for the City.

It is important to remember that the ADA is a civil rights law. As such, the City should interpret it broadly. We have added some observations to assist with context in this regard.

Regarding Existing Sites and Facilities

The title II regulation begins with a discussion regarding existing sites and facilities. **Section 35.105** requires a “self-evaluation” of policies, programs, and the buildings and sites within which those programs are held. We call that an access audit, and those results were provided earlier to the City.

The access audit compares sites and facilities to the 2010 Standards for Accessible Design and any Tennessee requirements that are more stringent. As noted earlier, we also incorporate smart practices for design and construction.

Following the access audit, per section **35.150(d)**, the City must create a transition plan. A transition plan is a phased retrofit schedule for every access deficit, noting

the date for barrier removal and the employee responsible for barrier removal. This increases cost-efficiency, thereby optimizing City resources.

Unusual in a civil rights law is a reference to maintenance, but that is what is required of the City in section **35.133**. The City is required to maintain accessible features, and we addressed that in our facilities reports. Maintenance is a factor for City assets such as playground surfaces, door pressure, pool lifts, accessible exterior surfaces, accessible restrooms, accessible parking, elevators, and many other elements of the built environment.

Regarding New Sites and Facilities, Alterations, and Additions

The title II regulation addresses new sites, alterations, and additions in section **35.151**. The City is required to adhere to the 2010 Standards for Accessible Design in all design and construction occurring after March 15, 2012. In addition, the City must follow any State of Tennessee requirements that are more stringent for that aspect of an element.

Regarding General Administration

The title II section **35.106** Notice requirement comes into play. This requires the City to make people with disabilities aware of how the requirements of the ADA are applied to City programs and services. We also refer to this as the invitation requirement, as it is an opportunity for the city to invite people with disabilities to use its facilities and sites, as well as programs and opportunities.

The title II section **35.107(a)** requirement addresses the naming of “a responsible employee”. Typically known as the ADA Coordinator, this employee coordinates city efforts to comply with title II. We often see a Citywide ADA Coordinator, who works with ADA Coordinators within each department, e.g., recreation, law enforcement, planning and development, engineering, administration, and so forth. In our search of the City website, we could not identify an ADA Coordinator.

The title II section **35.107(b)** requirement compels the City to have a process by which people with disabilities can raise complaints about access and inclusion. The process should provide “...for prompt and equitable resolution of complaints”.

We do **caution** here that City activity regarding 35.106 and 35.107 should be consistent with overall City initiatives. Integration of efforts is important and benefits the City as well as your residents with and without disabilities.

Regarding City Programs and Policies

The following is a discussion of the interface between title II requirements and City policies and programs. We gathered this information in our meetings with staff, policy reviews, and a review of your website content. Errors in names or titles are all mine, and I look forward to your edits.

We start with a discussion about the difference between therapeutic recreation programs and the ADA mandate that programs be provided in the most integrated setting, or as we refer to it, the inclusion mandate.

What is *inclusion*?

The ADA requires the City to make its programs and services accessible to and usable by people with disabilities. The ADA requires the City to provide services in the most integrated setting. That is defined as the setting in which people with and without disabilities interact together. The test is that these services shall be effective, in other words, if a registrant takes swim lessons, she should learn basic swimming skills.

The most integrated setting requirement is applied to City programs like senior adult programs, camps, community center activities, outdoor recreation, aquatics, sports, volunteering, and more. This **inclusion mandate became effective January 26, 1992**. This black-and-white requirement does have some room for the City to make some interpretations on, for example, just what is a reasonable modification. Find this mandate at section **35.130(d)**.

Many cities offer therapeutic recreation programs to complement inclusion supports. The City of Goodlettsville does not currently have a designated therapeutic recreation program.

Look at it this way...the City chooses to conduct camps, senior adult programs, outdoor recreation, aquatics, center activities, sports...and it has not currently chosen to conduct therapeutic recreation programs. There is not a “floor” here, these are choices made to provide a service to the community. Providing this service is the right thing to do.

There are similarities between therapeutic recreation and providing inclusion supports. Both require an assessment of the person with a disability. Both require a plan for supports, some plans being more formal than others. Both require training of staffs who will implement the planned supports.

Other Title II Requirements

Title II is broad and has many requirements for the City. Below is title II in a nutshell:

1. **35.130(a)** prohibits the City from, because of disability, excluding someone from a program or denying the benefits of a City program to that person. This is a broad general anti-discrimination requirement.
2. **35.130(b)(1)** prohibits the City from discrimination on the basis of disability through contractors or licensees. This applies to any contractual instructors, leaders, or concessionaires used by the City. These entities or persons must be as welcoming to people with disabilities as is the City.
3. **35.130(b)(1)(iv)** prohibits the City from “providing different or separate aids or benefits...unless...necessary to provide programs...” for persons with disabilities. This mandate permits the City to provide “special needs programs” or therapeutic recreation programs, so long as those are not the only opportunity provided for persons with disabilities. The City must allow persons with disabilities to also seek inclusive participation.

4. **35.130(b)(1)(v)** prohibits the City from aiding or perpetuating discrimination by providing “significant assistance” to an agency that does discriminate on the basis of disability. This typically applies to municipal department community affiliates or partners that use City properties to conduct services. These properties are often available at reduced rates, benefitting from taxpayer-funded infrastructure and maintenance. Such an entity cannot be allowed to discriminate on the basis of disability, and the City is expressly prohibited from supporting that agency.
5. **35.130(b)(1)(vi)** prohibits the City from denying a person with a disability the opportunity to be considered for a City advisory board or committee. It does not establish a quota, but does require the City to invite and consider otherwise qualified persons with disabilities for such a role.
6. **35.130(b)(2)** is the converse of 35.130(b)(1)(iv) and prohibits the City from denying a person with a disability the opportunity to participate in programs that are not separate or special.
7. **35.130(b)(3)** prohibits the City from discriminating on the basis of disability through administrative processes. This broad requirement boils down to process issues, and in Goodlettsville, typically includes program registration processes.
8. **35.130(b)(4)** prohibits the City from making a site selection for new facility or park development at a location that cannot be made accessible. There is a very limited exception here, and that is in regards to a site where compliance with the 2010 Standards is “structurally impracticable”.
9. **35.130(b)(5)** prohibits the City from selecting “procurement contractors” when those contractors will act in a discriminatory manner. An example here could be an agency that contracts out for management of a City site. The management firm must make reasonable modifications, and implement the ADA requirements as if it were the title II entity.
10. **35.130(b)(6)** prohibits the City from administering a certification or licensing program in a way that discriminates on the basis of disability. Examples here might be a lifeguard recertification class, or a youth sports coaching certification. Both programs must be implemented in a way that permits participation by otherwise qualified persons with disabilities.
11. **35.130(b)(7)** requires the City, in broad language, to make “reasonable modifications in policies, practices, or procedures” when doing so is necessary to avoid discrimination on the basis of disability. This section does allow the City not to do so when doing so would “fundamentally alter the nature of the service, program, or activity”, a very high bar to meet for the City. This latter language also clearly places the burden on the City to prove fundamental alteration, as opposed to a burden on the person with a disability.
12. **35.130(b)(8)** prohibits the City from imposing “eligibility criteria that screen or tend to screen out” otherwise qualified persons with disabilities. This often applies to any type of advance notice requirement, such as a requirement

that registrants who need a reasonable modification must register two weeks before the program begins. The rationale against an advance notice requirement is that the City accepts late registrations from people without disabilities, and therefore, it must do so for people with disabilities. We offer recommendations for the implementation of this requirement later in the report.

13. **35.130(c)** allows the City to provide benefits or services in excess of the requirements of title II. In other words, please do more. Title II sets the floor, not the ceiling, for City services for people with disabilities.
14. **35.130(d)** establishes the requirement that the City will provide "...services, programs, and activities in the most integrated setting". This is defined as the setting in which people with and without disabilities interact together to the maximum extent feasible. We discuss this mandate further in our recommendations.
15. **35.130(e)(1)** notes that a person with a disability is not required to accept a modification offered by the City. This effectively makes the person with a disability the leader of the team that plans any supports. The consequence of a decision to not accept modifications however, is that the person must now meet all standard rules for behavior and participation.
16. **35.130(e)(2)** notes that a guardian of a person with a disability has no right, under any circumstance, to "decline food, water, medical treatment, or medical services..." for a person with a disability. While this situation does not arise often, for entities with overnight camps, or camps of extended duration, it is an important policy consideration.
17. **35.130(f)** prohibits the City from adding a surcharge to fees a person with a disability must pay for participation. In other words, a person with a disability in court, camp, making public comment at City Council, swim lessons, or ice skating lessons must be charged the same amount as a person without a disability in that same program.
18. **35.130(g)** prohibits the City from denying participation by a person who is a known associate (family member or friend) of a person with a disability. This "association clause" is found in other civil rights laws.
19. **35.130(h)** permits the City to "impose legitimate safety requirements" in programs, and apply these, with a reasonable modification, to persons with disabilities. This clause does require, in strong language, that such safety requirements be "...based on actual risks, not on mere speculation, stereotypes, or generalizations about people with disabilities." In other words, safety requirements must be based on actual incident reports or past behavior, not a staff belief that something could happen.
20. **35.134** prohibits the City from retaliating against a person who has supported the proper implementation of title II requirements. This section also prohibits the coercion or intimidation of any person supporting the proper implementation of title II.

21. **35.135** notes that the City is not required to provide personal devices, such as wheelchairs, or prescription devices, such as eyewear. It is safe to say this requirement is a gray area. As a smart practice, many entities such as large retail stores do provide wheelchairs for customers.

This section further states the City is not required to provide services of a personal nature, such as “eating, toileting, or dressing”. We address this in our recommendations.

22. **35.136** requires the City to permit persons with disabilities to use a service animal, so long as it is housebroken and under control. The service animal must be trained to perform a task that relates to the handler’s disability. We have attached our model service animal policy for consideration by the City.
23. **35.137** requires the City to permit the use of mobility devices that were not necessarily designed with the transportation of people with disabilities as a primary purpose. These devices, called other power driven mobility devices (OPDMD), can include but are not limited to a Segway, golf car, riding mower with the blades up, or other devices. We will address this in our recommendations.
24. **35.138** requires the City to manage ticketing processes for venues in a way that assures persons with disabilities still have access to seats and a companion seat. The ticket reseller market has caused a loss in accessible seating from time to time. This provision places the burden of protecting accessible seats on the City.
25. **35.139** clarifies the approach required by City with regard to the 35.130(h) safety requirements clause. The City, here in 35.139, is allowed to deny participation to a person with a disability when he or she “...poses a direct threat to the health or safety of others”.

This clause also requires the City to conduct an individualized assessment in the process of making a direct threat determination.
The assessment must rely on current medical information and objective evidence.

We make two observations here.

The first is that a direct threat to the person with a disability is not referenced in this requirement. We believe, however, that the City has an obligation under state statutes to keep all individuals in its programs safe. A person with a disability who poses an objective direct threat to himself or herself should be prevented from harming himself or herself.

The second is defining some of the terms. An objective belief that harm will occur, in the mind of employee A, may not exist in the mind of employee B. Simple definitions help here.

As an example, unwanted physical contact is intentional contact by another that results in a bruise, fracture, abrasion, puncture, laceration, or swelling.

Regarding Communications

The title II regulation does impose some requirements regarding City communications. In general, **35.160(a)(1)** requires that City communications for people with disabilities are as effective as for people without disabilities. This broad language applies to bulletin boards, websites, television broadcasts, oral presentations, and more.

As a note, the current Presidential Administration has suspended many regulations that were in development, including a final website access standard. As a result, this requirement exists, but there is not a final and enforceable standard. We do recommend the City adhere to the Website Content Accessibility Guideline (WCAG) version 2.0.

Section **35.160(b)** requires the City to provide “appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities...an equal opportunity to participate...” in City programs and activities. The term auxiliary aids and services includes, but is not limited to, sign language interpreters, sound files of written text, readers, large font documents, assistive listening systems, Braille documents, and other effective means of modified communication. We will address this in our recommendations.

Section **35.160(c)** prohibits the City from requiring a beneficiary to bring his or her own sign language interpreter to a City activity or event. Conversely, the 35.130(b)(7) requirement to make reasonable modifications to rules would permit the City to allow a registrant to bring his or her own interpreter, if and only if the person volunteers to do so, and is not required to do so by the City.

Section **35.160(d)** permits the City to use video remote interpreting (VRI) as a way to furnish sign language interpreter services. This technology provides real-time, full motion video and audio and can be an effective alternative to an in-person sign language interpreter.

Section **35.161** requires the City to have text telephones (TTYs) to complement telecommunication systems. This requirement also applies to automated-attendant systems, which now must allow intervention by a live employee for interactive and effective TTY real time communication.

Section **35.162** requires the City to make emergency calls, such as 911 calls, available with direct access to TTYs or TDD and computer modems. This has been a requirement for public safety staffs since 1992, and we urge the City to investigate how it has met this requirement.

Section **35.163** requires the City to place signs at all inaccessible entrances to buildings, informing the public of the location of accessible entrances, or in the alternative, accessible facilities. This section also requires the City to make information about the location of accessible facilities, parks, and programs available to persons with limited vision or hearing.

Recommendations for City Departments

We interviewed two City staff leaders. As discussed earlier in the report, the purpose of the interviews was to identify how City staffs respond to requests for modification, and staffs experience with people with disabilities.

Recommendation 1: Appoint a current City employee as the ADA Coordinator.

Recommendation 2: If the role of ADA Coordinator has not been filled since that employee left the City, do so as soon as is possible. Have the employee become a Certified ADA Coordinator as soon as is possible.

Recommendation 3: Assign the ADA Coordinator to attend staff meetings in each Department to gain an understanding of when each Department has public contact, and how that contact can be made accessible.

Recommendation 4: Have the City Manager delegate to the ADA Coordinator the authority to receive, analyze, and fulfill requests for reasonable modification, and maintain a record of whenever such a request is denied.

Recommendation 5: Have the ADA Coordinator maintain a record of all requests for reasonable modification, showing pertinent information and the status of the request.

Recommendation 6: Require entities that receive City support (staff time, free facility or field use, grants, subsidies, etc.) to agree to comply with title II of the ADA.

Recommendation 7: Modify agendas for Department staff meetings so that agenda items always include “accessibility and inclusion of people with disabilities”. Assure that annual City reports address access and inclusion. Talk about the costs, benefits, and challenges. Every significant staff meeting agenda should include a discussion about access and inclusion. It is a simple truth: the more often staffs discuss these topics, the sooner every employee gets the message that this *is* the mission of the City of Goodlettsville.

Recommendation 8: Modify staff job descriptions to include a requirement that staffs support the inclusion of people with disabilities.

Recommendation 9: Modify performance evaluations to reflect how well the employee has supported accessibility and the inclusion of people with disabilities.

Recommendation 10: Identify and contract with sign language interpreters, and make staffs aware of the availability of sign language interpreters.

Recommendation 11: Develop training initiatives for career staff who engage with the public. Training is an effective tool and will result in increased awareness by City staff of the ADA requirements.

Recommendation 12: Consider the establishment of a number of specialized recreation programs, designed for people with disabilities to participate alongside others with disabilities. These programs can complement inclusive participation opportunities.

Recommendation 13: Implement the eight-step inclusion process described in the recommendations beginning on page 12 of this report.

Recommendation 14: Incorporate transition plan retrofit recommendations at Department sites within the Department budget and CIP.

Recommendation 15: Adopt a service animal policy similar to the one provided to the City by WT Group.

Recommendation 16: Adopt a policy regarding the use of Other Power Driven Mobility Devices (OPDMD) that is consistent with our recommendations below.

Every day, more people with limited physical mobility start to use a Segway or similar machines. These assistive devices provide great benefits to people with disabilities and the City policy could, at a minimum, address times of allowed use (dawn to dusk), speed limits, off-limits areas, status of the user as a person with a disability, and minimum age.

It is important to note that a power driven mobility device is not a wheelchair. That device has a separate definition and is already allowed in facilities and parks. The components of a policy are noted below. ***The City is welcome to use some, all, or none of this, but a policy must be in place. We recommend at least the following statements:***

Definition: *Other power-driven mobility device* (OPDMD) means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this policy.

Definition: *An electronic personal assistive mobility device* (EPAMD) is a device used by a person with a mobility impairment for ambulation. This definition does **not** include gasoline powered devices, golf cars, or riding lawn mowers.

Permission: The City of Goodlettsville authorizes persons with mobility impairments to use OPDMDs and EPAMDs in City facilities and sites subject to the following restrictions:

1. The operator of the device must be a person with a mobility impairment, and upon request by City officials, shall produce proof of such within 72 hours;
2. The device, if used in a facility or in a park, is allowed in any area of the facility or park in which the general public is allowed, with the exception of employee only spaces, stairways, and identified hazardous areas;
3. The device, if used in a facility, must be controlled by the operator. It:
 - A. may not exceed 4 mph;

- B. shall be driven on the right side of the circulation route;
 - C. is prohibited from carrying another person, or any object, on the frame that may make the device less stable; and
 - D. must not be operated in a dangerous or reckless manner that jeopardizes the safety of the operator, City employees, or City participants.
4. The device, if used in a park or outside, must be controlled by the operator. It:
- A. may not be operated between dusk and dawn unless equipped with headlights that are visible at 300’;
 - B. may not exceed 6 mph;
 - C. shall not be driven into wet or ecologically sensitive areas, posted as such;
 - D. shall be driven on the right side of the circulation route;
 - E. is prohibited from carrying another person or any object on the frame that may make the device less stable; and
 - F. must not be operated in a dangerous or reckless manner that jeopardizes operator safety, City employees, or City participants.
5. The City accepts no responsibility for storage of the device.
6. The City accepts no liability for damage to the device, or injury to the operator, whether caused by the operator, another visitor to a City facility or site, or any other circumstance.
7. The City accepts no liability for damage caused by the operator of the device, or injury to others caused by the operator of the device.
8. The City reserves the right to suspend the use of facilities or sites by the operator if doing so is in the best interests of the City and its residents.
9. The City reserves the right to change, modify, or amend this policy at any time, as it would any other policy.

The DOJ has a good technical assistance memo on its website at www.ada.gov.

Recommendation 16: Several US Department of Justice (US DOJ) Settlement Agreements involve policing issues. Identify and review two, and use these as internal staff and officer training tools.

Recommendation 17: Review the US DOJ training materials intended for law enforcement staffs. Titled "[Information for Law Enforcement](#)", these materials include interview tips and techniques, and other information that gives law enforcement officers the tools to deal with people with disabilities.

Recommendation 18: Conduct an audit of the City website to assure that all City web pages are compliant with WCAG 2.0.

Recommendation 19: Assure that street repair and resurfacing projects address accessibility requirements found in the Public Right-of-Way Accessibility Guideline adopted by the US Access Board and mandated by the Tennessee DOT.

Recommendation 20: Propose to the City Council the establishment of a common line item to support inclusion and accessibility, shared by all departments, funding the costs of supports pursuant to requests for reasonable modifications.

Recommendation 21: Establish an outreach effort to individuals with disabilities, and associations of individuals with disabilities, coordinated by the ADA Coordinator.

Implementing the ADA Inclusion Mandate with the Eight-Step Inclusion Process

We begin our closing recommendations with a review of the "most integrated setting" mandate. We believe the City can best implement this requirement with an eight-step inclusion process. Cities across the country have implemented this system since the mid-1990's. These eight steps incorporate title II requirements, smart practices, as well as court and administrative decisions.

Some of the following recommendations are clear and simple to implement. Others are not so clear because the status of the requirement is evolving. Where the City has alternatives to consider, we have identified those in our recommendation.

While this eight-step process is especially important for Parks and Recreation, it is applicable to other City departments regarding their public-facing activities.

Recommendation 22: Invite people with disabilities to participate in City programs, and use City sites and facilities. (Consistent with 35.106)

- Work with City communications staffs so the language used is consistent. We recommend something like the statement below:

"The City of Goodlettsville invites people with disabilities to enjoy our programs, services, parks, and facilities. For more information about our accessibility, inclusion, and special programs initiatives, contact (*insert name of ADA Coordinator*) Jane Smith at jsmith@goodlettsville.gov."

Recommendation 23: Tweak registration systems and processes to appropriately ask if registrants require a reasonable modification to use City facilities, programs, or services. (Consistent with 35.130(b)(7))

- We recommend the use of language like that below, in print and online registration materials. Again, work with City communications staff so this is consistent with language used in any other City publications. When this language is included in all

registrations, it is not discriminatory. In addition, when the registrant marks yes to the question below, the system must forward the registration to an appropriate employee for further processing.

“I need a modification because of disability to participate in this program. YES NO”

If a paper registration, this is a simple addition. If online, we urge that the City require the online vendor to make this a mandatory answer, prohibiting the registrant from proceeding without an answer.

Do not hold the registration. If a fee is required and it is paid, and if there is room in the class or activity, enroll the registrant pending the assessment, which is the next step in the process.

An important element of this step is to whom the registration is forwarded. We urge the City to send all registrations that request a reasonable modification directly to the ADA Coordinator, after enrollment in the program.

Recommendation 24: Once a registrant has requested a reasonable modification through the registration process, conduct an assessment. (Consistent with 35.139 and Anderson v. Little League)

- The assessment should occur promptly after the registration. The assessment should contrast the abilities of the registrant to the activities in the program for which he or she registered. The assessor should keep in mind the various modifications that can be made, throughout the assessment process.

City staff should never say the word “no”, in response to a request for modification, in the absence of an assessment. The City must make all registration staffs, managers, facility staffs, seasonal staffs, program staffs, and all other staffs aware of this point. This point is important and must be reinforced by the City.

In our experience, the best employee to conduct assessments is one who:

- Knows the City and its programs
- Knows a wide range of health and disability conditions
- Knows a wide range of City services
- Is experienced at adapting activities
- Is a good communicator with staffs as well as registrants and their families

We believe strongly that the assessor (we suggest a title of Inclusion Coordinator or Inclusion Manager) should not be the same staffs that plan and conduct special programs. While there is crossover in the necessary skills, the Inclusion Coordinator must be able to drop program roles and manage what can be difficult inclusion placements. As to credentials, we suggest that the Inclusion Coordinator should be either a Certified ADA Coordinator or a Certified Therapeutic Recreation Specialist. There are other credentials, such as adaptive PE teacher, art therapist, and so forth. In our experience, the two named above are more effective.

Recommendation 25: Once the assessment has been conducted, create a plan to implement the reasonable modification. (Consistent with 35.139 and US DOJ guidance)

- Creating the plan can be a simple process or a complex process. It depends on factors such as the registrant, the complexity of the disability or health condition, and the activity within the program. Some plans are in writing (more complex) and others are not, for example, providing staff with extra training.

The City can streamline this process by developing a list of modifications it will always do, such as changes to rules and policies, and a list of modifications it will never do, such as providing medical supports in a program. This list evolves with every court decision and settlement agreement. ***We do caution*** the City to determine a list of modifications it will provide (see recommendation 31). Err on the side of providing more, not less, supports. For federal court guidance see Burriola vs Greater Toledo YMCA, Anderson vs Little League, and US vs NISRA.

Recommendation 26: Once a plan exists, train the staff that are necessary for the effective support of the registrant. (Consistent with US DOJ guidance)

- Staff training regarding the plan is essential. It may be a simple training event, where the Inclusion Coordinator reminds the staff conducting the program to be more attentive to a registrant, or to assist with transitions from activity to activity. It may also be a complex event, such as reviewing a behavior management plan with a one-on-one staff assigned to the registrant. The Inclusion Coordinator should document training events and content for risk management purposes.

Do remember to protect the privacy of the registrant. Tennessee statutes and the ADA require the City to protect the privacy of people with disabilities who request and receive a reasonable modification.

Recommendation 27: During the assessment, planning, and training phases, maintain contact with the person who requested the modification, and his or her family. (Consistent with smart practices)

- Communication is essential to trust, and therefore, it is essential to the inclusion process. The Inclusion Coordinator should keep the registrant, or the family of the registrant, apprised of achievement of steps in the process. Notify them when the assessment is complete, or a plan is developing, or a plan is being introduced to the employees who will implement the plan.

We recommend that the Inclusion Coordinator maintain a communication log, noting emails, calls, visits, and other communications. This will help with planning for resource allocations. However, it is also an effective risk management tool.

Recommendation 28: Implement the plan. (Consistent with 35.130)

- Those who know the plan, implement the plan. This is the step where all of the preparation, the assessment, training, and the professionalism of the Inclusion Coordinator is tested. It is also a test of the program staffs. If part-time staffs are involved, how will they perform? Who trained volunteers that are involved, and was the training effective? Are other career program staff at the City aware of the plan and supportive?

Recommendation 29: Evaluate the way in which City staffs implement the plan.
(Consistent with smart practices)

- This is the final step in the eight-step inclusion process. The City should develop both formative and summative evaluation tools.

The recommendations above regarding the eight-step inclusion process are critical. We continue now with more generalized recommendations, some of which touch on the inclusion process points above.

Recommendation 30: Designate a current employee as inclusion overseer, or in the alternative, create a new position. (Consistent with smart practices)

- We do not believe in any system that the staff assigned to plan and conduct special programs can also manage inclusion. We recommend this be a stand-alone position, responsible for documentation, assessments, staff training, plan implementation evaluation, research, outreach, and other tasks necessary to make inclusion a success. We urge the City to ensure this employee works closely with the Citywide ADA Coordinator, or is the ADA Coordinator.

Recommendation 31: Determine which modifications will be made and which will not be made. (Consistent with smart practices)

- Some modifications are in the black-and-white of the statute and the US DOJ regulation. Others are not quite so clear. The City will provide modifications when so indicated by the assessment. We recommend separating modifications into three categories: mandated supports, personal supports, and quasi-medical or medical supports.

These categories are evolving and it is important that the City stay current.

31.A *Mandated Supports*

The City must provide these modifications. These include, but are not limited to:

- changes to rules and policies
- providing extra staff support (including one-on-one, based on the assessment)
- providing volunteer support
- providing additional training to staff
- acquiring and providing adaptive equipment
- monitoring blood sugar
- removing architectural barriers

- providing accessible transportation
- developing behavior plans
- providing sign language interpreters and other auxiliary aids or services
- adapting policies regarding food and scents in facilities
- providing home visits
- reassigning programs to an accessible location
- requiring contractors to make modifications
- applying emergency allergy epi-pens

31.B *Personal Supports*

The supports here fall into a gray area. We recommend these be provided as a smart practice. These include:

- assisting a registrant in changing clothes if he or she cannot do so because of disability
- assisting a registrant with toileting if he or she cannot do so because of disability
- assisting a registrant with eating if he or she cannot do so because of disability
- holding and presenting medications for a registrant, pursuant to authority granted by the Tennessee Nursing Code

31.C *Quasi-Medical or Medical Supports*

Today, these are not required. That said, with the increasing complexity of disability and related health conditions, many persons need assistance with the tasks below. Without help here, these persons cannot participate.

- Retain a nurse, or provide staff training consistent with the Tennessee Nursing Code, and when necessary, inject insulin for a person with diabetes who cannot do so himself
- Retain a nurse, or provide staff training consistent with Tennessee Nursing Code, and when necessary, rectally apply anti-seizure medication when the registrant is unable to do so himself
- Take other actions, with a nurse or trained employee, that may be viewed as invasive, but is necessary for lifesaving purposes

We caution the City that if a modification in the latter two categories is already provided, it is difficult to “un-ring” the bell. An important part of the determination of

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what is provided is a candid and truthful discussion with staffs in a wide range of departments.

Recommendation 32: Make City staffs aware of the ADA dispute process. (Consistent with 35.107(d))

The City already has a 35.107(b) access and inclusion dispute process. Make it available to City staffs, train staffs on how to use it, and make it available to City registrants and stakeholders.

Recommendation 33: Adopt a policy that compels designers and contractors to strictly adhere to the 2010 Standards and any more stringent Tennessee requirements. (Consistent with 35.151)

- The City should take an official stand and brand the 2010 Standards as its design standard. In RFQs and RFPs, require submitters to demonstrate an understanding of the Standards.

Recommendation 34: Adopt a policy that compels designers and contractors to adhere to the 2013 Outdoor Developed Areas Final Guideline. (Consistent with 35.151)

- This final guideline applies today only to federally owned and operated sites such as trails, beaches, campsites, picnic areas, and viewing areas. However, it has been in development since 1994 (more than 20 years).

Recommendation 35: Adopt a policy that compels designers and contractors to adhere to the 2011 Public Right-of-Way Accessibility Guidelines (PROWAG) published by the US Access Board. (Consistent with 35.151)

- The US DOJ has not yet adopted this final guideline as a standard. This applies to pedestrian infrastructure. US DOT is requiring states and cities that wish to continue to receive road funds to implement PROWAG requirements. The State of Tennessee Department of Transportation has adopted PROWAG and does require local jurisdictions to meet PROWAG requirements. The City should take an official stand and brand this guideline as a City standard.

Recommendation 36: Require contractual program providers to make reasonable modifications at their cost. (Consistent with 35.130(b)(1))

- Contractors who manage programs and services on City property must agree to provide reasonable modifications. This can be added to existing contractual agreements, and made a part of future agreements. This ranges from entities that may conduct a program at Delmas Long, to other entities that conduct an entire aspect of Goodlettsville services.

Recommendation 37: Require affiliates or community groups who use City facilities or sites at reduced or no cost to agree to provide reasonable modifications. (Consistent with 35.130(b)(1)(v))

- Use agreements with outside groups such as Little League, youth football, and youth soccer must include language that compels them to make reasonable

modifications, unless their use of City assets is at full market rate, and without other supports such as advertising, insurance, etc.

Recommendation 38: Make staffs aware of the limitations on the application of “legitimate safety requirements” in programs, and the need for objective information in this regard. (Consistent with 35.130(h) and 35.139))

- This is another critical requirement. Discuss this at staff meetings, interviews, reports, and staff training events. Legitimate safety concerns are a safety issue that incident reports objectively support. A belief that “something could happen” is a fail under title II.

Recommendation 39: Incorporate people-first language in all documents and reports. (Consistent with smart practices)

- The use of people-first language sends a message of respect to people with disabilities. A good guide is [here](#).

Recommendation 40: Use the title II term “reasonable modifications for public-facing City services, not the employment term of reasonable accommodation. (Consistent with title II)

- Regarding documents and reports that apply to making City services, opportunities, and sites available to the public, use the term “reasonable modification”, not reasonable accommodation, in all internal and external communications.

The term reasonable accommodation is an employment term, not a term related to service to the public. The right language sends the right message to Goodlettsville residents.

Conclusion

The City of Goodlettsville has excellent venues and services. With a professional and compassionate staff, it is successfully addressing access and inclusion requests already. The number and complexity of those requests grow. Implementing these recommendations today will allow for optimal use of City resources tomorrow. When in doubt, lean towards more access, or a yes, instead of less access, or a no. The City cannot find trouble by doing more than it should, but can find trouble by doing less than it should.

The recommendations in this report merely help make what is already good, better. If we can clarify our recommendations, or add to them, please reach me at john.mcgovern@rac-llc.com or by phone at 224-293-6451. It has been our honor to work with your team.

Prepared and Submitted by _____


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