

## Introduction

In an effort to provide and maintain compliance with the American with Disabilities Act, the City of Montpelier contracted with the Institute for Human Centered Design (IHCD) to undertake a comprehensive assessment of its policies, practices and procedures as well as its facilities to determine compliance with the requirements of the Americans with Disabilities Act (ADA). The review and recommendations provided in this assessment also go beyond strict compliance assessment to recommend enhancements to current conditions that would result in a more usable, inclusive and welcoming environment for members of the City of Montpelier community.

Information about corrective action will include recommendations based on Title II of the ADA as well as recommended *'best practices'* for each aspect that requires action.

The assessment included policies, practices and procedures relative to employment and non-discrimination in policies, practices and procedures for all of the City's programs, services and activities including those related to effective communication.

Corrective action is needed in policies and procedures to create written policies that would ensure the City of Montpelier's compliance with applicable laws. In addition, the City may wish to consider making a commitment to a more accessible website to address issues identified by the Website Accessibility and Usability review. Choosing to make the website completely accessible would make it available to site visitors who use assistive technology such as screen readers as well as to website visitors with a mix of other functional limitations. The website is also a valuable asset in communicating the City's commitment to equal opportunity for people with disabilities through a clear statement and contact information for the ADA Coordinator. It can also provide a helpful opportunity to share information about accessible routes to reaching the City's programs and activities including meetings and requesting effective communication or modification of policies.

This report summarizes IHCD's findings of ADA Title II compliance. The information pertinent to this assessment was obtained by an on-line ADA questionnaire developed by the Institute for Human Centered Design (IHCD) and submitted by nine (9) respondents departments from the City of Montpelier, additional information submitted by the ADA Coordinator and from the City's website. This mix of sources constitutes the basis for this compliance assessment report. From the staff responses it is clear that the City understands its obligations under Title II of the ADA but additional steps are necessary to ensure that people with disabilities enjoy the same opportunities to participate in its programs, services and activities as Montpelier residents without disabilities.

## Analysis

Title II of the ADA prohibits discrimination on the basis of disability. Specifically, Title II requires that:

*No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity (28 CFR Part 35.130 (a)).*

This report is divided into sections where these requirements apply. Each section includes the applicable citation from Title II of the ADA; IHCD's summary of findings after reviewing answers from the ADA questionnaire and information from the website. It also includes IHCD's recommendations for the City of Montpelier to implement.

### **I - Designation of Responsible Employee**

Title II of the ADA makes clear that a public entity must designate a responsible employee and adopt grievance processes.

*A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. (28 CFR Part 35.107 (a)).*

Title II provides little specific guidance for implementing this requirement but the primary role of the designated employee, also called the ADA Coordinator, is making sure that the City is in compliance with the requirements.

#### Finding

The City of Montpelier has met its obligation to designate a responsible employee by appointing Thomas McArdle as the City's ADA Coordinator.

#### Recommendations

The City should consider clarifying for its entire community and City employees the name and scope of responsibilities of the ADA Coordinator. Locating the name, list of responsibilities and contact information for the current ADA Coordinator was not as straightforward as it could be. Highlighting this information will improve compliance and make for more efficient operations with respect to the needs of members of the public with disabilities.

Furthermore, clarification on the ADA Coordinator will:

- Make it easier for the City to be proactive in meeting the needs of members of the public with disabilities;
- Help the City to develop and articulate a clear vision and mission with regard to members of the public with disabilities;
- Reduce confusion and improve the City’s day-to-day operations with respect to members of the public with disabilities;
- Permit employees to respond more quickly to needs as they arise because they have a primary contact for addressing these needs;
- Build in-house expertise and capacity;
- Prevent confusion and help ensure that candidates for employment, employees and the public have a clear understanding of their responsibilities and rights under the ADA.

## **II – Grievance Procedures**

Title II of the ADA requires a public entity to adopt an adequate grievance process.

*A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part. (28 CFR Part 35.107 (b))*

### Findings

The City’s website provides a grievance procedure document, but it was difficult to find. Additionally, while there is a link at the bottom of the homepage labeled “Accessibility,” the linked web page did not include any information about the Americans with Disabilities Act.

From the responses submitted by staff, some departments mentioned that ‘we don’t have any’ formal or informal grievance procedures for their department, or stated the question is ‘not applicable’. Another department wrote ‘We completed a survey many years ago.’ It is not clear if staff in all departments is aware of their ADA obligation and the process for meeting the requirement for grievance procedures.

### Recommendations

The City should take steps to clarify its grievance process regarding members of the public.

IHCD recommends

- Ensure City’s employees and the public are aware of the grievance procedure process and can provide information to members of the public about the process when appropriate.
- Provide an ‘ADA Compliance’ hyperlink on the City’s website home page directly to the grievance procedure form and state the commitment to provide copies in accessible formats upon request.

- IHCD understands that the ADA Coordinator has tried to maintain a record of the resolution of all submitted grievances. A continuing effort should be made to communicate with all departments so good record-keeping is maintained as relates to all complaints submitted and the steps taken towards resolution.
- Ensure the complete contact information for the ADA Coordinator including name, address, email and phone number is available on the Montpelier web site in an accessible format and at a location that can be easily found.

### **III – Notice**

Title II of the ADA requires that public entities notify participants of its non-discrimination policies:

*A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part. (28 CFR Part 35.106)*

#### Findings

From the responses submitted by staff it seems that the City of Montpelier does not have a uniform policy regarding the posting of ADA Non-Discrimination Notices for members of the public. Multiple City departments reported that notices were not posted, while other departments referenced posting locations such as a ‘bulletin board’, a ‘break room’, or ‘by the entrance door’.

#### Recommendations

The City should consider clarifying with staff their Notice of Non-Discrimination policy to comply with ADA Title II that states that public entities shall take initial steps to notify program/service participants, beneficiaries and employees of its obligations by:

- Publishing the Notice in all the materials distributed by the City; post the Notice on the City’s website home page and post copies in public locations in the City’s buildings.
- Including the ADA Coordinator’s name, address, telephone number and email address on materials and publications that contain general information disseminated to staff and members of the public.

### **IV - Reasonable Modification of Policies, Practices and Procedures**

Title II of the ADA requires state and local governments to modify its policies when necessary to avoid discrimination:

*A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the*

*public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. (28 CFR Part 32.130 (b)(7))*

None of the survey respondents indicated that they were aware of a situation where their department was unable to provide an accommodation or modification that was requested by an individual with a disability. IHCD recommends that Montpelier ensure that City’s employees can provide information to members of the public about the process of requesting reasonable modification of policies when appropriate. Montpelier should also ensure that the form for requesting reasonable modifications of policies is in an easy to find section of the City’s website, and state the commitment to provide copies in accessible formats upon request.

**V – Eligibility Criteria**

A Title II entity may not impose eligibility criteria that may prevent a person with a disability to participate in its programs, services or activities:

*A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. (28 CFR Part 35.130 (8)).*

This requires that ADA Title II entities may not impose eligibility criteria that either screen out or tend to screen out person with disabilities, unless it can show that such requirements are necessary for the provision of the service, program or activity.

Findings

Some departments responded to the online survey indicating that they have eligibility criteria such as residency, business association membership or income qualifications. These requirements are necessary for the provision of the service, program or activity, and permitted under the ADA.

**VI - Employment and Reasonable Accommodation**

Title II of the ADA prohibits discrimination on employment on the basis of disability:

*No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity. (28 CFR Part 35.140 (a)).*

This requires that ADA Title II entities make reasonable accommodation to qualified employees with disabilities. Reasonable accommodation may include modifying work schedules, job restructuring, and making facilities used by employees readily accessible to employees with a disability.

Note that the requirements of Title I of the ADA, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR Part 1630, apply to employment in any service,

program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of ADA Title I. (28 CFR Part 35.140 (b)(1)).

### Findings

Based on responses to the ADA questionnaire, there is no evidence that the City has failed to provide reasonable accommodation to its employees.

IHCD is aware that some job descriptions may list physical requirements. The City should review any such requirements to be sure they are necessary, and not something that could be addressed by a reasonable accommodation provided to an employee or in some other way. For example, sometimes a lifting requirement can be addressed via the provision of a wheeled cart, by the determination that the requirement is not in fact an essential job function for a given position, or by another method that may be reasonably requested by an applicant who has been given a job offer or an individual who is an existing employee.

### Recommendations

- Ensure that materials and publications that contain general information disseminated to City’s employees include information on the requirements of reasonable accommodation under the ADA.

## **VII – Effective Communication through Auxiliary Aids and Services**

Title II entities are required to provide appropriate auxiliary aids and services to ensure “effective communication” with people with disabilities. This obligation applies to all members of the public with disabilities including job applicants, program participants and people who are seeking information about the City’s programs, services or activities. Specifically Title II requires that:

*A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. (28 CFR Part 35.160 (a)).*

Auxiliary aids and services are devices or services that enable effective communication for people who have vision, hearing, or speech disabilities (communication disabilities), use different ways to communicate. 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 (e.g., a query at a service counter in the City Offices, a meeting, a job description).

The obligation to communicate effectively with people who have disabilities applies to the presentation and exchange of information in all forms including sound, print, graphics and voice.

Furthermore, this requirement may include but is not limited to providing sign language interpreters, telephone handset amplifiers, telecommunication devices for Deaf persons (TDD's), note takers, written materials for persons who are Deaf or hard of hearing or transcripts, braille, digital or audio information for persons who are blind or have difficulty seeing.

The decision about what auxiliary aid is appropriate should evolve from a consultation between the ADA Title II entity (City of Montpelier) and individuals with disabilities wherever possible to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is always strongly encouraged to achieve effective communication, the City of Montpelier and all public entities are required to give primary consideration to the requests of individuals with disabilities. The Effective Communication obligation does not require the City to take any action that would result in a fundamental alteration in the nature of its services, programs or activities or that would impose an undue financial and administrative burden.

### Findings

There is no evidence that the City has failed to provide effective communication when required. But from the department responses, it seems that clarifying procedures of providing effective communication could be beneficial.

Some of the questionnaire responses include:

- '[We] should ensure that the website's tools are being used consistently and correctly internally.'
- 'We hope that our website on the City Website is effective but we have never researched it.'
- 'I assume they are using a [web] platform that is supportive of visually impaired services.'
- 'I don't know.'

It is also not clear if face-to-face communication with individuals with disabilities is equally effective as communication with people without disabilities, or if information available in print format is currently available in accessible electronic or hard-copy formats such as large-font, or on the website.

Some of the survey responses included the following:

- 'We cannot ensure communications are equally effective.'
- '...we do not have policies or procedures in place.'
- 'We don't have any policies to ensure communication is effective with people with disabilities in this department.'
- 'I'm not sure how to answer this.'
- 'We don't but perhaps we should review our communications.'

### Recommendations

The City should consider developing and publicizing clear processes for members of the public and employees to request auxiliary aids and services:

- Staff should clearly understand the responsibility to provide auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. (28 CFR Part 35.153 (b)). Staff should also clearly understand the process for requesting them when needed.
- Staff needs to understand the scheduling time necessary in requesting a sign language interpreter or a Computer-Assisted Real Time Interpreter (CART) through the Commission on the Deaf and Hearing Impaired. Interpreters must be qualified.
- Ideally, the City should develop a system for training staff to meet these responsibilities especially knowing the processes for securing braille, making large print, other types of alternate formats, understanding how to request interpreters or CART and the length of time needed prior to an event. It is also important that staff know how to use and maintain the assistive listening systems and other special devices to assist people with disabilities to enjoy effective communication.
- Members of the public also need to have a clear understanding of the process for requesting auxiliary aids and services and the time period in which a request must be made if it involves ASL interpreters, CART, or special equipment such as assistive listening devices that may need to be rented. This information should be included in the general information for the public as well as on the City's website.
- The City of Montpelier would benefit from a written policy on Effective Communication so staff across all departments has an understanding of their responsibility and clarify about what to do.
- Distribute the effective communication notice to all department heads; published in a local newspaper of general circulation serving the City; in all materials regarding the City's programs, services or activities and on the City's website home page. Copies should also be posted in prominent locations in the City's public buildings.
- IHCD, through its New England ADA Center, can provide a training for the City of Montpelier on Effective Communication that would be appropriate for department heads and public-facing City staff in order to build confidence about rights and responsibilities and building capacity within the City to comply with this important element of the ADA.

Sample of Effective Communication request:

*"The City of Montpelier is committed to the full participation of people with disabilities. Any person with a disability who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the City's programs, services, activities and committee meetings, should contact the office of the ADA Coordinator (Name, Address, Phone number and Email) as soon as possible but no later than 48 hours\* before the scheduled*

*event.” (\*if the City needs 2 or 3 weeks or longer to ensure an interpreter, then it must be clearly stated).*

- Ensure that information and resources at each department interacting with the public are available in alternate format. That could be done by having a large print sign at each department and on each department’s portion of the website stating:  
*“All of our materials are available, upon request, in alternate format such as audio, large print or braille.”*
- Ensure that staff interacting with the public is fully trained on how to respond to TTY and relay calls for telephone communications with people who are deaf, have difficulty hearing or have speech disabilities.
- Ensure that the City’s website and other web-based services are accessible to people with disabilities. It is the Department of Justice position that when services are provided on a website, those services too must be made accessible. (see [www.ada.gov/mclennan\\_pca/mclennan\\_sa.html](http://www.ada.gov/mclennan_pca/mclennan_sa.html) Section K on Web Based Services and Programs)
- To address these Information and Communication Technology (ICT) issues Montpelier should commit to fixes and maintenance of the website accessibility. All staff should undergo training on accessibility best practices for posting web content and creating accessible documents. All third-party software should be properly vetted for compliance with WCAG 2.0 AA and section 508 of the Rehabilitation Act.
- Ensure that all the fillable forms on the City’s website are accessible to people with disabilities. IHCD recommends providing web forms or accessible fillable PDF for all the forms available on the City’s website such as the Tour of Montpelier video.
- Include captioning for all the videos available on the website.

IHCD has sent the City of Montpelier the following two documents:

- Montpelier Website Accessibility Usability Synopsis of Issues
- Montpelier Website Review Catalog of issues

They provide information about website accessibility issues and recommended corrective measures.

Additionally, under Title II of the ADA, emergency programs, services and activities must be accessible to people with disabilities. Ensure that the City takes the necessary steps to effectively communicate with people with disabilities and make the emergency plan available on the City’s website and update the emergency procedure as often as is necessary.

**NOTE:** *Even though there is a fundamentally changed pattern among people who are Deaf or hard-of-hearing in relation to communication technology TTY remains a compliance requirement. Because of these advances in communication technology, some people who are deaf and people with speech*

*disabilities no longer have TTYs in their homes and rely instead on instant messaging, text messaging, email, or the video communication features of computers.*

### **VIII – Emergency Preparedness, Evacuation Plans, and Emergency Shelters**

While a review of the City of Montpelier’s emergency preparedness, evacuation plans and emergency shelters was not part of this RFP, as evidenced by recent U.S. Department of Justice’s (DOJ) Project Civic Access settlement agreements, DOJ’s views on emergency preparedness, shelters and evacuation plans are critical components of a City’s responsibilities related to accessibility

#### **Recommendations**

- Visibly post up-to-date floor plans for all buildings;
- Post information about evacuating people unable to use stairs; (Currently they have some information for schools).
- Develop evacuation plans for each facility;
- As plans are developed or revised, adopt policies to ensure that community evacuation plans enable people with disabilities, including those who have mobility, vision, hearing, or cognitive disabilities, mental illness, or other functional limitations, to safely self-evacuate or to be evacuated by others. Until all emergency shelters are accessible with parking, exterior routes, entrances, interior routes to the shelter area, and accessible toilet rooms serving the shelter area, the City should identify and widely publicize to the public, including persons with disabilities and the organizations that serve them, the locations of the most accessible emergency shelters.

For more information see:

*Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities* - <http://www.ada.gov/emergencyprepguide.htm>

*ADA Tool kit: Emergency Management* -

<http://www.ada.gov/pcatoolkit/chap7emergencymgmt.pdf>

*FEMA Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters* - [http://www.fema.gov/pdf/about/odc/fnss\\_guidance.pdf](http://www.fema.gov/pdf/about/odc/fnss_guidance.pdf)

Additionally, we recommend considering engaging the National Fire Protect Association (NFPA) for evacuation training and guidance, providing and load verifying backup power source for elevator to address F.N.S.S. emergency shelter needs, installing one or more accessible shower to meet emergency shelter needs and providing backup power for charging batteries for wheelchairs or breathing equipment and refrigeration for medication to meet emergency shelter needs.

## Reference List

### ADA Action Guide for State and Local Governments:

- [www.adaactionguide.org](http://www.adaactionguide.org)

### Department of Justice:

- Americans with Disabilities Act Title II Regulations:  
[http://www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm)
- Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities - <http://www.ada.gov/emergencyprepguide.htm>

### Federal Emergency Management Agency:

- FEMA Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters - [http://www.fema.gov/pdf/about/odc/fnss\\_guidance.pdf](http://www.fema.gov/pdf/about/odc/fnss_guidance.pdf)

### Job Accommodation Network:

- <http://www.askjan.org>

### New England ADA Center:

- <https://www.newenglandada.org>