

Town of Westwood

Part C – Legal Overview

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Legal Overview

The Town of Westwood is obligated by both federal laws and state codes concerning the rights of people with disabilities in the daily provision of programs, services, and activities. At the end of this report, there is a comprehensive list of relevant laws.

Federal Obligation: American with Disabilities Act (ADA)

Based on the 1964 Civil Rights Act and expanding upon the obligations of the 1973 Rehabilitation Act, the 1990 ADA prohibits discrimination against people with disabilities. The ADA provides civil rights protections to individuals with disabilities similar to those afforded to individuals on the basis of race, color, sex, national origin, age, and religion. The cornerstone of Title II of the ADA, which applies to state and local governments, is clear: no qualified person with a disability may be excluded from participating in, or denied the benefits of, the programs, services, and activities provided by state and local governments because of a disability.

The 2008 Amendments to the ADA (ADAAA), signed into law on September 25, 2008, describes in more detail the range of conditions covered by the civil rights protections of the ADA. The amendments expand the definition of “disability” to include impairments that substantially limit a major life activity and states that when determining whether someone qualifies as having a disability, one cannot take into account assistive devices, auxiliary aids, accommodations, medical therapies and supplies. The amendments also address episodic disabilities that may go into remission but still can significantly limit a major life activity when active, such as epilepsy and post-traumatic stress disorder. The ADA defines a disability as¹:

- A physical or mental impairment that substantially limits one or more major life activities (i.e., working, talking, hearing, seeing, caring for one's self);
- Having a record of a physical or mental impairment that substantially limits one or more major life activities;

¹ To learn more about qualified individuals with disabilities or to read the full text of the ADA, please visit <http://www.ada.gov>

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- Being regarded by others as having an impairment such as individuals with severe facial scarring.

It is important to stress that the primary obligation of public entities such as the Town of Westwood, under Title II of the Americans with Disabilities Act, is to ensure that, when viewed in their entirety, the programs, services, and activities offered are equally available to people with disabilities. The Town is required to follow the 2010 ADA Standards for Accessible Design in new construction and alterations. The 2010 ADA Standards must also be used for corrective actions if existing conditions do not comply with the original ADA Accessibility Guidelines. Municipalities also must relocate programs or otherwise provide access to programs located in inaccessible older facilities (e.g., facilities built before the ADA went into effect January 26, 1992). Ensuring program access may require capital investment when there is no alternative solution and should be a priority for corrective action.

Note that the websites of Title II entities are also considered “*programs*” and should be accessible to the standards of the Web Content Accessibility Guidelines 2.0 AA.

The Town must **communicate effectively** with people who have hearing, vision, or speech disabilities. The Town is also required to make reasonable modifications to policies, practices, and procedures where necessary to ensure the equal participation of people with disabilities. Whatever is written or spoken must be as clear and understandable to people with hearing, vision, or speech disabilities as it is for people who do not have disabilities. In addition, the ADA requires the provision of “auxiliary aid and service” to meet their responsibility for effective communication. Auxiliary aid and service refer to readers, notetakers, sign language interpreters, assistive listening systems, open and closed captioning, text telephones (TTYs), videophones, information provided in large print, braille, audible, or electronic formats, and other tools for people who have communication disabilities.

Following the passage of the ADA, the Department of Justice (DOJ) issued the 1991 ADA Standards for Accessible Design to address physical access to facilities and transportation. These standards were based almost exclusively on the US Access Board’s guidelines (ADA Accessibility Guidelines – ADAAG). In 1994, slight technical amendments were made. Then in 2004, the US Access Board issued new guidelines that were promptly adopted by the US Department of Transportation and other federal agencies. But only in 2010 did the Department of Justice issue a revised and updated ADA Standard called the 2010 ADA Standards for Accessible Design (2010 ADA Standards) that would apply to all Title II and Title III entities. These standards revised requirements for policies such as ticketing and service animals, and for physical elements such as assembly seating, established construction tolerances for certain

elements and formalized long-standing guidelines for play areas, golf courses, recreational boating facilities, swimming pools, and other recreational facilities.

Facilities that meet or exceed the 1991 ADA Standards are not required to make changes to the new 2010 ADA Standards except in the case of renovation. For elements that are non-compliant, the corrective measures must align with the 2010 ADA Standards. It is not expected that the buildings will meet or be brought up to all of the 2010 ADA Standards absent significant or total renovation. State and local governments must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible. This means Title II entities do not need to remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Alterations to historic properties under the ADA

Alterations to historic properties must comply with the specific provisions governing historic properties in the 2010 ADA Standards, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative solutions may be used. The decision to use alternative solutions for that feature must be made in consultation with the appropriate historic advisory board as designated in the 2010 ADA Standards (for Massachusetts, the Massachusetts Historical Commission), and interested persons should be invited to participate in the decision-making process.

Note that any corrective actions needed to ensure program accessibility would also have to comply with the requirements of the 2010 ADA Standards for historic facilities.

State Obligation:

Massachusetts Constitutional Amendment – Article 114

The Massachusetts Constitution states:

“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth.”

Article 114 is written broadly. It prohibits discrimination based on disability on any level within the state, not just for recipients of state or federal funds. For example, Town meetings must be

held in an accessible location with sign language interpreters provided if needed, and the Town cannot refuse to do business with an individual based on the person’s disability.

Massachusetts Architectural Access Board (MAAB)

The Architectural Access Board (AAB) is a regulatory agency whose mandate is to develop and enforce regulations designed to make public buildings accessible to, functional for and safe for use by persons with disabilities. See the Rules and Regulations of the Architectural Access Board 521 CMR. In addition to writing regulations, the Board decides on variance requests, provides training on its regulations, issues advisory opinions and makes decisions on complaints. Local building inspectors are responsible for enforcing the regulations which are a specialized section of the Massachusetts Building Code. See 780 CMR.

The construction, reconstruction, remodeling, alteration, or change of use of a building or facility that is open to the public triggers the authority of the Architectural Access Board. New construction must fully comply.

For renovation, remodeling, or alteration:

- The work being done must comply with the regulations.
- If the work done in any 36-month period is greater than \$100,000, the “work being performed” is required to comply. In addition, an accessible entrance and an accessible toilet room, telephone and drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided.
- If the work done in a 36-month period is more than 30% of the “full and fair cash value” of the building², the entire building must come into compliance.

Enforcement: Anyone can file a complaint with the Architectural Access Board. The Board has the authority to issue variances and/or impose fines of up to \$1000 per violation per day of noncompliance with its order.

² This is usually the assessed value established by the City or Town. See 521 C.M.R. § 5.38 for details about establishing value where no assessment exists.

Building Facilities Overview

Under Title II of the ADA, the Town of Westwood must make sure that “No qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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 35.149].

A public entity may not deny the benefits of its programs, services, and activities to individuals with disabilities because its facilities are inaccessible. This means that each program, service and activity of the Town, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities.” This requirement is known as Program Accessibility [28 CFR Part 35.150].

The program accessibility requirement does not necessarily require the Town to make each existing facility accessible or to take any action that would threaten or destroy the historic significance of a historic property. It also does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or in an undue financial and administrative burden.

The Town may comply with the requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the Town’s programs, services, or activities readily accessible to and usable by individuals with 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.

In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer programs, services, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

Outdoor Facilities Overview

The program accessibility obligation does not typically require that every outdoor area be made accessible. As noted before, “when viewed in its entirety” applies to programs for which there are multiple locations for comparable programs. Usually, a public entity determines which method it will use for meeting its program accessibility obligations. When structural changes

are made to existing facilities, the changes must comply with the 2010 ADA Standards for Accessible Design. When choosing to purchase equipment or to make structural changes, the public entity should factor financial resources required to maintain program accessibility.

Over time, the Town will need to reassess its compliance with program accessibility, and it may become necessary to acquire new accessible equipment or make structural modifications.

It is important to note that those elements in existing facilities that are subject to supplemental requirements of the 2010 ADA Standards (e.g., elements for which there are neither technical nor scoping specifications in the 1991 Standards) such as (C) *Recreational boating facilities*; (D) *Exercise machines and equipment*; (E) *Fishing piers and platforms*; (H) *Play areas*; (J) *Swimming pools, wading pools, and spas*; and (L) *Miscellaneous - (1) Team or player seating and Accessible route in court sports facilities*, need to be brought into compliance.³

³ As described in 28 CFR 35.150(b)(2)(i) Title II ADA Regulations

Reference List

Federal Laws:

- Americans with Disabilities Act (ADA)
- 2010 ADA Standards for Accessible Design

State Law:

- 521 CMR Massachusetts Architectural Access Board – Rules and Regulations

Guidance:

- ADA Action Guide for State and Local Governments: <https://www.adaactionguide.org>
- ADA Checklist for Existing Facilities: <https://www.adachecklist.org>
- Outdoor Developed Areas: A Summary of Accessibility Standards for Federal Outdoor Developed Areas: <https://www.access-board.gov/attachments/article/1637/outdoor-guide.pdf>
- US Access Board Guide to the ADA Accessibility Standards Including Accessibility Animations: <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/animations>
- ADA Checklist for Polling Places: <https://www.ada.gov/votingchecklist.htm>
- Solution for Five Common ADA Access Problems at Polling Places: https://www.ada.gov/ada_voting/voting_solutions_ta/polling_place_solutions.htm
- Proposed Public Rights-of-Way Accessibility Guidelines (PROWAG): <https://www.access-board.gov/prowag/>