

**City of Santa Rosa ADA Self-Evaluation and Transition Plan Update
First Amendment 2012**

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Introduction

The Americans with Disabilities Act (ADA) is a civil rights law that mandates equal opportunity for individuals with disabilities. The ADA prohibits discrimination in access to jobs, public accommodations, government services, public transportation, and telecommunications. The City of Santa Rosa has previously undertaken a comprehensive re-evaluation of its policies, programs, and facilities to determine the extent to which individuals with disabilities may be restricted in their access to City services and activities.

In 1993 the City of Santa Rosa completed its original ADA Self-Evaluation and Transition Plan. The original plan describes the process developed to complete the re-evaluation of Santa Rosa's activities, provides policy and program recommendations, and presents a Transition Plan Update for the modification of facilities, public rights-of way, and programs to ensure accessibility. The City's plan was updated in 2006 and improvements were monitored and implemented.

In July 2010, the Department of Justice issued revised final regulations implementing the Americans with Disabilities Act Amendment (ADAA) for Title II (State and Local government services). These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design and went into effect on March 15, 2011.

This First Amendment to the Transition Plan is intended to incorporate these new rules and replace existing language in the ADA Self-Evaluation and Transition Plan Update of 2006.

All References in this document are to revised regulations for Title II of the Americans with Disabilities Act (ADA) 2010 Standards Title 28- Judicial Administration Chapter 1- Department of Justice Part 35 Nondiscrimination on the basis of disability in state and local government services (28 CFR Part 35)

City Staff should be aware that in 2006 the California State Legislature passed the Prudence K. Poppink Act that made significant changes to the State's disability laws and expanded the definition of disability. It amended existing provisions of law and reemphasized previous legal and policy positions. Any conflicts regarding which is the appropriate standard to apply should be determined by consulting the City's ADA Coordinator and/or City Attorney. Refer to California State Disability Under the Fair Employment and Housing Act – DFEH-208DH (3/09)

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The following language replaces and expands the language for "undue burden" found under 1.1.4 in the 2006 ADA Transition Plan Update:

1.1.4 Undue Burden

Undue burden means significant difficulty or expense incurred in the provision of an accommodation. Undue burden includes, but is not limited to, financial difficulty. Undue burden refers to any modification that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature of operation of the business of the City. Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. If a particular accommodation is determined to cause an undue burden to the City, the City shall attempt to identify another modification that would not pose such a burden. If cost causes the undue burden, the City must consider whether funding for the accommodation is available from an outside source. If no such funding is available, the City must give the person with a disability the opportunity to provide the modification or to pay for that portion of the modification that constitutes an undue burden.

The following factors shall be considered in determining whether a program modification would create an undue burden: the nature and cost of the modification, the financial resources of the City available to make the modification, the impact the expense of the accommodation will have on the affected City operation, and the permanence of the alterations affecting the site.

A determination to deny a request for an accommodation or modification can only be made by the ADA Coordinator or City Attorney and must be accompanied by a statement citing the reasons for reaching that conclusion. A citizen may appeal an accommodation decision through the City Manager.

Formal ADA grievances will be reviewed and responded to by the City's ADA Coordinator with guidance from the City Attorney. If a citizen does not agree with the resolution received from the ADA Coordinator, they may appeal to the City Manager.

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The following new sections are added to the 2006 ADA Transition Plan Update:

1.3.7 Relationship to other laws.

The City will apply the strictest standard including Federal laws, State or Local standards that controls and provides equal protection for the rights of individuals with disabilities or individuals associated with them.

The following adds language not found in the 2006 ADA Transition Plan Update:

1.6 Bus Stop Accessibility

The City will survey its 417 Bus Stops to ensure that currently existing bus stops and those that are installed in the future are accessible for people with disabilities, provide a safe location to wait for the bus, and an accessible pathway to get to and from the bus stop. Time frame for completion of survey and action plan July 2013

The following new section adds a Policy not found in the 2006 ADA Transition Plan Update:

2.27 Service Animals Policy

- 1. The City will modify if requested as an accommodation its policies, practices and procedures to permit the use of a service animal by an individual with a disability.**
2. City Staff may ask an individual with a disability to remove a service animal from the premises if:
 - a) The animal is out of control and the animal's handler does not take effective action to control it; or
 - b) The animal is not housebroken.
 - c) If there is a reason to exclude the service animal under § 35.136, the individual with a disability shall be given the opportunity to participate in the service, program, or activity without having the service animal on the premises.
 - d) The service animal shall be under the control of its handler and shall have a harness, leash or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective

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performance of work or tasks, in which case the service animal must be otherwise under the handler's control (**e.g.**, voice control, signals, or other effective means).

- e) The City is not responsible for the care or supervision of a service animal.
 - f) The City Staff shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. City Staff may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. City Staff will not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. City Staff may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (**e.g.**, the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).
 - g) The City will allow individuals with disabilities to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.
 - h) The City will not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If the City normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.
3. Miniature Horses - The City shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, the City will consider:

- a) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;
- b) Whether the handler has sufficient control of the miniature horse;
- c) Whether the miniature horse is housebroken; and

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- d) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

The following new section adds a Policy not found in the 2006 ADA Transition Plan Update:

2.28 Mobility Devices Policy

City Employees will not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.

City Employees may ask a person using another power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. A public entity that permits the use of another power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A "valid" disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance's requirements for disability placards or cards.

2.29 Other Mobility Devices

The City will make reasonable modifications in its policies, practices, or procedures to permit as an accommodation the use of other power-driven mobility devices by individuals with mobility disabilities, unless the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the City has adopted pursuant to § 35.130(h).

Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification, the City will consider—

1. The type, size, weight, dimensions, and speed of the device;
2. The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
3. The facility's design and operational characteristics (**e.g.**, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

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4. Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility;
and
5. Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

The following is added to 2.24 under City Website in the 2006 ADA Transition Plan Update:

2.24 Communications Policy

City Website - Web-Based Services and Programs

The City will distribute to all persons (employees and contractors) who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) used by the City (Internet Personnel) the technical assistance document, "Accessibility of State and Local Government Websites to People with Disabilities."

www.ada.gov/websites2.htm

Additionally, the City will do the following:

1. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
2. Check the HTML of all new web pages. Make sure that accessible elements are used, including alt tags, long descriptions, and captions, as needed;
3. When posting documents on the website, always provide them in HTML or a text-based format (even if also providing them in another format, such as Portable Document Format (PDF)).
4. Develop and implement a plan for making existing web content more accessible;
5. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
6. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

The following is added to 3.0 in the 2006 ADA Transition Plan Update:

3.0 Transition Plan Update for City Facilities

- 3.3 The City will complete a physical audit of facilities to identify facility barrier and identify recommendations and alterations in order to meet the new Federal Standards that went into effect March 15, 2012 subject to the Safe Harbor provision set forth in 3.4 below to include:

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Time frame for completion of survey and action plan September 2013

- 3.3.1 Residential facilities dwelling units, sections 233 and 809.
 - 3.3.2 Amusement rides, sections 234 and 1002; 206.2.9; 216.12.
 - 3.3.3 Recreational boating facilities, sections 235 and 1003; 206.2.10.
 - 3.3.4 Exercise machines and equipment, sections 236 and 1004; 206.2.13.
 - 3.3.5 Fishing piers and platforms, sections 237 and 1005; 206.2.14.
 - 3.3.6 Golf facilities, sections 238 and 1006; 206.2.15.
 - 3.3.7 Play areas, sections 240 and 1008; 206.2.17.
 - 3.3.8 Swimming pools, wading pools, and spas, sections 242 and 1009.
 - 3.3.9.1 Team or player seating, section 221.2.1.4.
 - 3.3.9.2 Accessible route in court sports facilities, section 206.2.12.
- 3.4 Safe Harbor
- Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.

This means that if a facility was built after 1992 when the 1991 ADA Standards were in effect and before the 2010 Standards took effect on March 15, 2012, they do not have to make changes to that facility until a modification/remodel is undertaken.

- **The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (i.e., elements for which there are neither technical nor scoping specifications in the 1991 Standards).** Elements in the 2010 Standards not eligible for the element-by-element safe harbor will be identified under 3.3 through the City’s self-survey process. An action plan will be developed to bring those identified facilities elements into compliance within a five year period of time.

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3.5 Unique Characteristics Exception

1. The full compliance with the requirements of section § 37.41 is not required where it can be demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.
2. If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
3. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities.
4. The City will provide Paratransit services for individuals with disabilities who are unable to use the City Bus system due to structural barriers that limit their access the bus stops located in the proximity of their residences based on the Paratransit eligibility process and their inability to access the stop.

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Appendix A - Definitions

The following definitions replace or add to those found in the 2006 ADA Self-Evaluation And Transition Plan Update.

Disability

The ADA defines disability as a mental or physical impairment that substantially limits one or more major life activities. ADA protection extends not only to individuals who currently have a disability, but to those with a record of a mental or physical impairment that substantially limits one or more major life activities, or who are perceived or regarded as having a mental or physical impairment that substantially limits one or more major life activities.

Auxiliary aids and services

- (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
- (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

Modification is not required if:

- It changes the essential nature of a program or activity of the person with a disability;
- It creates a hazardous situation;
- Adjustments or modifications requested are primarily for the personal benefit of the individual with a disability; or
- It poses an undue burden on the City.

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Mobility Devices

Other power-driven mobility device 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 section.

Service Animals

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

California FEHA Definition of Disability

In 2000, the California State Legislature passed the Prudence K. Poppink Act that made significant changes to the state's disability laws. (DFEH-208DH (03/09)
It amended existing provisions of law and reemphasized previous legal and policy positions. These legislative amendments took effect on January 1, 2001. Some of the important changes are as follows:

The Legislature found and declared that the laws of this state provide protection

- independent of the 1990 ADA and has always afforded broader protection than federal law.
- The definitions of mental and physical disability were amended to prevent discrimination based on a person's "record or history" of certain impairments.

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- Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, multiple sclerosis, and heart disease.
- The Legislature clarified that the definitions of physical and mental disability only require a “limitation” upon a major life activity, not a “substantial limitation” as required by the ADA. They further stated that when determining whether an employee’s condition is a limitation, mitigating measures should not be considered, unless the mitigation itself limits a major life activity.
- “Working” is a major life activity regardless of whether the actual or perceived working limitations implicate a specific position or broad class of employment. Whereas, under the ADA, the mental or physical disability must affect a person’s ability to obtain a broad class of employment.
- An employer or employment agency cannot ask about a job applicant’s medical or psychological condition or disability except under certain circumstances. In addition, it is illegal to ask current employees about these conditions unless the condition is related to the employee’s job.