



February 26, 2019

Heidi Murphy, Director
Library and Recreation
City of Pleasanton
400 Old Bernal Avenue
Pleasanton, CA 94566

Dear Heidi:

Please accept this revised final report to the City, including recommendations regarding program and policy compliance with title II of the Americans with Disabilities Act. This complements our 2017 preliminary report provided to the City.

Our reports build on our interviews of the then-named Department of Community Services staffs. The departmental consolidation anticipated in 2016 has occurred, and now, in this report, make references to the Library and Recreation Department.

Introduction

The City retained us in 2016 to evaluate Community Services Department programs and public-facing policies, for compliance with title II of the Americans with Disabilities Act (ADA). Our work included several visits to Pleasanton, to meet with staff, identify issues, and discuss solutions. During our initial work, the Department experienced some personnel changes due to the retirement of two key employees. This delayed the development of our preliminary final report, which was delivered in late June of 2017. I returned to Pleasanton again for a staff training event regarding the recommendations.

Throughout our work it was clear that Pleasanton had already taken significant steps to serve people with disabilities in programs. I viewed my role as a facilitator to help the City to continue to do so and to, where possible, improve the services it provides.

We have grouped our recommendations into two sections. Section 1 addresses systemic Department processes, and in it we suggest the implementation of an eight-step inclusion process. Section 2 addresses specific Department programs and publications. The Library was not a part of our original scope; however, we do address in general terms the Library functions in Section 1.

SECTION 1: Recommendations Regarding the Eight-Step Inclusion Process

In the training conducted in November of 2017, we reviewed the eight-step inclusion process for Department staffs. This process is effective and compliant, and

combines regulatory requirements and smart practices. In the recommendations below, we offer systemic advice for all Department functions.

1. Designate a current employee as the **Department ADA Coordinator** and require that person to interface with the Citywide ADA Coordinator and Assistant City Attorney as necessary. We recommend that the Department ADA Coordinator be someone with enough experience in the Department to know formal and informal chains of command. Promote this appointment in online and print materials. ***This is a smart practice for the implementation of title II 35.107.***
2. Designate a current employee as the **Inclusion Support Supervisor** (select a job title that reflects your own human resources nomenclature). ***This is a smart practice for the implementation of title II 35.150.***
 - A. In the alternative to recommendation 2, create a new professional position, and recruit and retain a new Inclusion Support Supervisor. We recommend recruiting a Certified Therapeutic Recreation Specialist, or a Recreation Therapist Certified (California), for this position. ***This is a smart practice for the implementation of title II 35.150.***
 - B. In the alternative to recommendation 2, in partnership with neighboring jurisdictions, create a joint powers authority for the purpose of providing recreation inclusion supports. ***This is a smart practice for the implementation of title II 35.150.***
 - C. In the alternative to recommendation 2, contract out with a professional firm to provide the services to support inclusion. ***This is a smart practice for the implementation of title II 35.150.***
3. Begin the development of rationale for future budget requests to develop and ***fund a central line item for the support of inclusion placements*** in programs conducted by the Library and Recreation Department. ***This is a smart practice for the implementation of title II 35.150.***
4. Adopt the ***eight-step inclusion process*** described in recommendations 5 through 13 below, and require all staff to adhere to the process. ***This is a smart practice for the implementation of title II 35.150.***
5. Draft language that ***invites the residents of Pleasanton who have disabilities*** to use programs, sites, and facilities of the community services and libraries department. It should read something like this: ***This is a smart practice for the implementation of title II 35.106.***

“The City of Pleasanton Library and Recreation Department invites people with and without disabilities to enjoy our sites, facilities, and programs. For more information reach helpfulstaff@pleasantonca.org.”

6. **Modify online and print registration forms** to include the following statement. This will inform staffs when a registrant is asking for a modification due to disability. ***This is a smart practice in the implementation of title II 35.130.***

I need a modification because of disability for this program. YES NO
7. **Modify online and print registration processes** to assure that when a registrant with a disability, with or without a reasonable modification, meets essential eligibility requirements such as capacity, charges, and conduct, that he or she will be enrolled in the program pending the assessment by Pleasanton staff or representatives. ***This is a smart practice for the implementation of title II 35.150.***
8. Establish a **system for the prompt assessment** of persons with disabilities who have registered for programs and asked for a modification due to disability. In addition to receiving information from the registrant, if and when an observation is necessary, create a permission form that will allow City staffs to observe the registrant in programs conducted by other entities. ***This is a smart practice in the implementation of Anderson v. Little League and title II 35.130(b)(7).***
9. Upon completion of the assessment, **draft a plan** as to how the Department will provide supports to facilitate safe and enjoyable participation in programs, facilities, and sites. ***This is a smart practice in the implementation of title II 35.130(b)(7).***
10. Once a plan is prepared, **train the staff** that will implement the plan. **Maintain communication with the registrant** and his or her family or caregiver during the assessment and planning stages. This is important for the development of trust between the family and registrant and staffs. ***This is a smart practice for the implementation of title II 35.130(b)(7).***
11. Prepare staffs to **implement the plan**. Emphasize the importance of adhering to the plan. ***This is a smart practice for the implementation of title II 35.130.***
12. Develop easy to use **formative evaluation forms** so that staffs can visit sites and gather information as to the effectiveness of the plan while the program is underway. With that information, staffs can make necessary changes in the support plan. Also, staff should **develop summative evaluation processes** for evaluation of supports at the end of the program. ***This is a smart practice for the implementation of title II 35.130.***
13. The City maintains a record regarding requests for reasonable modifications received by the Department, noting whether the request was fulfilled or denied, details about how the request was fulfilled, and the status of the request. The goal of this effort is to assure consistency throughout the

Department when requests for modification are received. ***This is a smart practice for the implementation of title II 35.130(b)(7).***

Technology is changing the way supports are provided for people with disabilities. A wearable insulin patch is a good example. It is important to acknowledge that not every type of support the City will encounter is necessarily known today. As technology changes, City staff should remain current by reviewing information provided by registrants about new technologies and supports. This is particularly true in the evolution of treatments for diabetes and seizure disorders.

14. We suggest that reasonable modifications be grouped in three categories. Those are listed below:
 - A. ***Mandated supports*** are modifications specifically referenced in the statute, title II regulation, court orders, and implemented as smart practices.
 - B. ***Personal supports*** are modifications that involve providing services for a registrant who, because of his or her disability, may not be able to perform themselves. These may include holding and presenting of prescription medication in a way that is consistent with state law, and other similar tasks. ***It is unclear as to whether this type of support will be viewed by a federal District Court as a reasonable modification.*** That said, many cities across the United States provide some personal supports as a reasonable modification.
 - C. ***Quasi-medical or medical supports*** are modifications that require the administration of medication, or some other quasi-medical or medical technique. ***To date, this type of support has not been viewed by a federal District Court as a reasonable modification. While there are settlement agreements between US Department of Justice and other entities on these subjects, there is not yet a precedent decision of which we are aware.*** To our knowledge, most cities in the United States do not provide these supports.

We note that some modifications could fit into more than one category. Two examples are the administration of Epinephrine and Glucagon. As disability becomes more complex, we believe the City will receive more requests for supports in the latter two categories.

This is a smart practice for the implementation of title II.

15. We believe strongly in the value of ***citizen feedback***.
 - A. Continue the work of the City-wide Human Services Commission.
 - B. From time to time, gather information from the public with disabilities regarding access preferences and priorities.

This is a smart practice for the implementation of title II.

16. **Establish ongoing training** for Department staffs regarding disability awareness, inclusion concepts, inclusion techniques, and current court and administrative decisions. ***This is a smart practice for the implementation of title II 35.150.***
17. Inclusion also means existing City sites have been evaluated for compliance with California Title 24 and ADA 2010 Standards for Accessible Design requirements, and that a phased retrofit plan (known as a transition plan) has been prepared. The City did prepare a transition plan in 2004, and it was updated in 2008. Retrofits listed in the transition plan have been included in the biennial Capital Improvement Plan (CIP). The US Department of Justice adopted standards for park assets such as playgrounds, sports fields and courts, and pools, in 2010, and these became effective in 2012. As the earlier City transition plan was completed before the new Standards became effective, we recommend:
 - A. That the City retain an expert familiar with Title 24 and ADA requirements and ***update the existing transition plan, which should include a current access audit of all existing City facilities as required by title II 35.105.***
 - B. That the City require the expert to, after the access audits, ***develop a phased retrofit plan that meets or exceeds the title II requirements found at 35.150(d).***
 - C. That the City continue to include updated transition plan access retrofit work in the biennial CIP.

SECTION 2: Recommendations for Specific Pleasanton Programs

The systemic recommendations above establish a framework for City departments or activities. We did have the opportunity to review some specific processes and materials and our remarks in that regard are below.

Our review process included a look at documents we received from the Department. We marked up those documents with recommended changes, and we provided those to Department staffs earlier.

We do note that our interviews and the review of Department processes and publications occurred almost three years ago. Our remarks below are based on those documents, and not any documents that are more current than 2016. We recommend the changes described below:

1. *2016/2017 Season Firehouse Arts Center*
 - a. The material lacks information about what to do if guest needs modifications for a program. This can be provided for online purchases by

having a required question that asks, “Do you need a modification due to a disability to participate in this program?”. If the answer is “yes”, City staff will sell the ticket or tickets as requested.

- b. The parking map does not have information on where guests can find accessible parking or where there is an accessible route to the theater. This can be indicated by a separate section in the map key, a section below the map, or in some other way that calls the viewer to the map.
- c. As discussed in the interview with Firehouse staffs, when a person with a disability is auditioning, neutral evaluation criteria should be applied.

The Department is already implementing these recommendations, as of the date of this final report.

2. *RADD Consent and Directions to Staff for the Administration of Medicines*

- a. We recommend the City continue to maintain the database of modifications it has provided.
- b. RADD programs are intended for persons with disabilities. We recommend the City continue to provide modifications as appropriate.

3. *City of Pleasanton Community Services Volunteer Handbook*

- a. We suggest referring to the “Volunteer Job Description” as “Volunteer Tasks”. This supports the position that volunteers are not employees, and instead, are program participants. Also, rephrase “Volunteer Performance Evaluation” to “Volunteer Feedback Form” since it is a volunteer program and not employment.
- b. Be certain that the Online Volunteer System is accessible and compliant with the Section 508 requirements.

The Department is already implementing these recommendations, as of the date of this final report.

4. *Community Services Activities Guide- Summer 2016*

- a. Page 3, in the Access & Inclusion section, revise the statement to make it person-first by having it state something like that below:

“In compliance with the Americans with Disabilities Act (ADA), the City of Pleasanton Library and Recreation Department encourages individuals of all abilities to participate in its programs. If you need a modification due to disability for a program, please note so by marking YES on the registration form regarding whether a modification is requested. An Inclusion Team employee will call you to arrange a discussion. Feel free to call us at xxx/931-5340.”

- b. Page 68, in the General Information section and the bullet point #4, we recommend that the Department not specify the number of days of notice prior to the start of a program, for registrants seeking a modification to participate in programs.

We do suggest that to make optimal use of the resources of the City of Pleasanton, note that requests prior to the start of a program will more likely be filled in time for the person to participate in the program.

The Department is already implementing these recommendations, as of the date of this final report.

5. *Field Trip Guide 2016-2017 School Year*

- a. The Guide lacks any statement regarding inclusion. No name or number is listed if a registrant wants more information. We suggest the addition of language like that below:

“Field trips are open to persons of all abilities. To request a modification because of disability, please mark YES on the registration form regarding modifications.”

The Department is already implementing these recommendations, as of the date of this final report.

6. *Community Services Activity Guide- Fall 2016/ Winter 2017*

- a. Page 3, in the Access & Inclusion section, revise statement to make it person-first by having it state, “In compliance with the Americans with Disabilities Act (ADA), the City of Pleasanton Library and Recreation Department encourages individuals of all abilities to participate in its programs. If you need a modification due to disability for a program, please note so by marking YES on the registration form regarding modifications. An Inclusion Team employee will call you to arrange a discussion. Feel free to call us at xxx/931-5340.”
- b. Page 54 in the General Information section in bullet point #4, never require advance notice that a person needs a modification to participate. We do suggest that to make optimal use of the resources of the City of Pleasanton, note that requests prior to the start of a program will more likely be filled in time for the person to participate in the program.

The Department is already implementing these recommendations, as of the date of this final report.

7. *Pleasanton Senior Center Volunteer Manual (Revised May 2014)*

- a. Person-first language is recommended on page 9 in bullet point #5. Instead of, “Paratransit is available to seniors age 70 and older or those

individuals that are ADA qualified (18 years of age or older).”, it could instead read, “Paratransit is available to seniors age 70 and older, or a person with a disability that is qualified by WHEELS Dial-A-Ride Staff as eligible for their service and are 18 years of age or older.”

The Department is already implementing these recommendations, as of the date of this final report.

8. *Pleasanton Senior Center Code of Conduct*
 - a. We suggest that person-first language is needed on Page 1 in guideline #1. Instead of, “...disabled adults of any age.”, it should read, “individuals with disabilities of all ages.”
 - b. We suggest that person-first language is needed on Page 2 in guideline #13. Instead of, “However, qualified participants with disabilities who require modifications or aids in order to move within the facility or participate in activities should speak with staff about an accommodation.”, it should instead state, “However, participants with disabilities who require modifications or aids in order to move within the facility or participate in activities should speak with staff about arranging such modification.” This is consistent with the language used in ADA title II, where reasonable modifications, not accommodations, are to be made by the City.
9. *The RADD RAP Summer 2016 June-August Edition (Summer 2016)*
 - a. As there is no definition of “basic needs” in title II of the ADA, we suggest that the City delete the language that requires a RADD participant that needs assistance with basic needs to come to the program with a caregiver.
 - b. Additionally, we suggest that the RADD materials note something like the statement below:

“Reasonable modifications due to disability will be provided at no charge to the RADD participant or family.”
10. *RADD Program Brochure*
 - a. No recommendations are necessary, as this is a compliant document.
11. *RADD Registration Form- Summer 2016*
 - a. No recommendations are necessary, as this is a compliant document.
12. *RADD Consent and Directions to Staff for the Administration of Medicines*

It is unclear as to what is required by the ADA regarding the administration of prescription medicine. This is an evolving area of the law.

- As a smart practice, we suggest the City hold and present medication and continue to use the Consent and Directions to Staff for Administration of Medicines, and do so in a way that complies with state statutes.
13. *Pleasanton Paratransit Service Riders Guide (July 2013)*
 - a. We suggest that person-first language is needed in the Table of Contents under the Applying for Eligibility section. Instead of, “Americans with Disabilities Act (ADA) Clients”, it should be revised to, “Other Eligible Pleasanton-Sunol Residents”.
 - b. Regarding the requirement for an ADA identification card, note that the law does not require that persons with disabilities carry proof of such on their person. The language should be revised to reflect this.
 - c. On page 11, reasonable modification revision is recommended. Staff securing lap belts if help is needed is a reasonable modification.
 - d. One page 11, policy change is advised and also is a reasonable modification. Providing lap belts that can be used for the current ride is a reasonable modification. Denying someone a ride because they don’t have a lap seatbelt is not an advisable policy and could result in loss or injury.
 14. *Pleasanton Paratransit Service (PPS) Brochure*
 - a. We suggest person-first language is needed on the back side of the first flap. We recommend it be revised to, “...shared ride service to Pleasanton and Sunol residents, aged 70 years and older, and individuals with developmental disabilities.”
 - b. We suggest person-first language is needed on the front side of the third flap in the Wheels Dial-A-Ride section. Revise it to “Wheels Dial-A-Ride also serves paratransit eligible riders in Pleasanton when PPS is not operating...”.
 - c. We suggest revised language is needed in the Eligibility Guidelines in bullet point #2. It needs to be revised to. “Be 70 years of age (or older), or be determined by the WHEELS Dial-A-Ride Staff as eligible for their service.”
 15. *Paratransit Service Application*
 - a. We suggest revised language on Question #1 titled, “How do you currently travel to your most frequent destinations?” Instead of the answer selection, “ADA Paratransit”, we suggest adding, East Bay Paratransit, and Wheels Dial-A-Ride, as separate answers and removing ADA Paratransit as an option.

16. *Pleasanton Downtown Route Brochure (DTR)*
- a. We suggest person-first language is needed on the front side of the third flap in the PPS section. Revise it to "...Door-to-Door Shared Ride Transportation Service for Pleasanton and Sunol Seniors and residents with developmental disabilities."
 - b. We suggest person-first language is needed on the front side of the third flap in the Wheels Dial-A-Ride section. Revise it to "Wheels Dial-A-Ride also serves paratransit riders in Pleasanton when PPS is not operating..."

Conclusion

The Department practices regarding ADA compliance are not uniform. Assuring that all staffs follow the same general process is critical. We recommend the Department create a new position for a coordinator or supervisor of inclusion, as discussed earlier in this report. We also recommend, as a smart practice, that Department staff adhere to the eight-step inclusion process. Variances in the analysis and fulfillment of requests for reasonable modification by different City program units may create the potential for inconsistent compliance with the ADA.

If there are any questions about our systemic or program recommendations, please call me at 224-293-6451 or email me at john.mcgovern@rac-llc.com. We have appreciated the opportunity to work with the committed staff of the Department.

Sincerely,



John N. McGovern, JD
Partner, Principal in Charge
WT Group Accessibility Practice