



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Title II of ADA

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Title II of ADA

Reference Number: MTAS-1073

Title II of ADA addresses the right of access to public services by individuals with disabilities. In some cases an accommodation may be as simple as providing assistance filling out utility forms, or as complex as making sure bathrooms, drink fountains, hallways, and other spaces can accommodate those in wheelchairs.

Public entities include any state or local government and any of its departments, agencies, or other instrumentalities. All activities, services, and programs of public entities are covered, including activities of state legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving federal financial assistance, Title II extends to all the activities of state and local governments whether or not they receive federal funds. Public transportation services operated by state and local governments are covered by regulations of the department of transportation.

Qualified Individuals

DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new buses must be equipped to provide services to people who use wheelchairs. A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.

The "essential eligibility requirements" will depend on the type of service or activity involved. For some activities and essential job requirements the ability to meet specific skill and performance requirements may be "essential." For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal. This means that a city may not refuse an individual with a disability from participating in events, parks and recreation facilities, and anything else that could be discriminatory toward those individuals with a disability. This may include such things as:

- allowing working dogs to be in buildings, events, and facilities;
- providing supporting aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result;
- ensuring facilities are easily accessible to those with disabilities;
- not charging or penalizing those with disabilities for using services; and
- removing barriers that would adversely impact those with disabilities (i.e., requiring a driver's license as a sole means of ID).

Safety Concerns

Restrictions due to documented safety hazards may be imposed, as long as they are valid and not speculative in nature.

A city may not charge a person with a disability for the use of an auxiliary aid. Cities are required to furnish auxiliary aids unless the purchase or creation of the auxiliary aid would result in an undue burden (financial or administrative). A city is not required to provide auxiliary aids that would translate to a fundamental change in the nature of a service, program, or activity.

E-911 and Emergency Services

Emergency telephone services, including 911 services, must provide direct access to individuals with speech or hearing impairments.

Building Accessibility

Cities should continually check building standards and architectural standards, as they have been revised since the inception of ADA.

Note the Safe Harbor provision of Title II requires that public entities ensure their programs are accessible to individuals with disabilities. This does not always mean the city is required to make structural changes to buildings. The determination of whether a program is accessible is made by looking at the totality of circumstances for each activity or program.

The department's Title II regulations for state and local governments are found at Title 28, Code of Federal Regulations, Part 35 (abbreviated as 28 CFR pt. 35). The ADA Standards for Accessible Design are located in Appendix A of Title 28, Code of Federal Regulations, Part 36 (abbreviated as 28 CFR pt. 36 app. A and amended by 76 FR 13287, March 11, 2011). Those regulations, the statute, and many helpful technical assistance documents are located on the ADA website at www.ada.gov [1] and on the ADA technical assistance CD-ROM available without cost from the toll-free ADA Information Line at 1-800-514-0301 (voice) and 1-800-514-0383 (TTY).

Note: *This section is not intended to provide comprehensive information on the spatial, physical, or construction issues surrounding ADA. For information related to these issues please check with your MTAS consultant for additional assistance.*

Links:

[1] <http://www.ada.gov>

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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