



TO: Lueshell H. Taylor, ADA Coordinator, City of Lewisburg, TN

FROM: Sharon Rollins, P.E., MTAS Public Works Consultant
Stephanie O'Hara, MTAS Legal Consultant

DATE: July 16, 2018

RE: ADA Questions

You recently asked MTAS the following:

- How the city's utilities - gas, electric, water/wastewater - should handle ADA compliance?
- What does the city need in regards to procurement procedures, zoning ordinance and municipal codes?

After reviewing the city's charter and title 2 of the city's code, MTAS legal consultants conclude that the utilities mentioned in your email - water/wastewater, gas and electric - are city entities, and for the purposes of ADA, they would be included in the count of employees to reach the 15 or 50 employee thresholds under the law. Under title 2 of the city's code, the city creates boards for the three utilities and confers the city's powers upon the utility boards, but ultimately, the utilities are created using the city's statutory authority, which could be repealed and returned to the governing body. The number of employees would mainly be a factor in employment issues (15 or more employees), the transition plan requirements (50 or more employees), and the requirement to designate an ADA Coordinator (50 or more employees).

Regardless of the number of employees, the utilities need to make all programs accessible. Programs would include public meetings, payment of bills, meeting with employees if needed, and any other programs the city might offer. Such programs may include tours of the facilities, learning about the utilities' operations, etc. If the utilities offer such programs at the utility's facility and the facility is not accessible, they might consider (upon request for

accommodation) moving a meeting or videoing the portions of the facility for programs such as a tour.

The city may consider modifying the building with a ramp. The utilities may also need to review their websites for accessibility if they have online payment/service options. Many cities are now looking into website accessibility more closely. The utilities should consider also providing some notice language of how to seek accommodation on their bills, including the ADA Coordinator's contact information. Finally, the utilities need to post notice of ADA compliance at the utilities physical locations and on the websites. Model language that could be posted in offices and on their website as well as in bills is attached.

Since the city reaches the threshold of 50 employees, the utilities need to be included in city's transition plan or tasked with their own review. MTAS believes the governing body has the authority to delegate the transition plan responsibility to the three utility boards. This would include parking, sidewalks, etc. around the customer service portions of the buildings.

Since at least one ADA Coordinator is required for cities with 50 or more employees, this should be a consideration of the governing body. The city may choose to delegate one ADA Coordinator for the entire city, including the utilities, or the city may choose to allow each utility to designate its own coordinator. If each utility has its own HR department and policies, this may be good reason for the city to allow each utility to delegate a departmental ADA contact/coordinator. However, noncompliance by the utility would ultimately be the responsibility of the city. Thus, the city would want the main ADA Coordinator to work closely with any separate utility's ADA Coordinator.

As for employees seeking accommodation, the utilities must comply with ADA requirements since they have at least 15 employees. Thus, the utility would be required to:

(1) provide a reasonable accommodation (2) that permits a qualified applicant or employee with a disability (3)(a) to participate in the job application process, (3)(b) to perform the essential functions of the job, and (3)(c) to enjoy benefits and privileges of employment equal to those enjoyed by other employees. The ADA Coordinator should maintain records of these accommodations and keep them confidential from supervisors (except necessary information), other employees, etc.

You also asked how the city might address ADA issues in regards to procurement procedures, zoning, and municipal codes generally. For the

municipal code, MTAS recently incorporated the following language into the model code-adopting ordinance:

Section _____. Waivers–Americans With Disabilities Act/Fair Housing Act/equivalent state statutes. *The ordinances of the City/Town of _____ and the provisions of the municipal code are subordinate to applicable federal and state law.*

If a waiver is sought with respect to the requirements of an ordinance or provision of the municipal code on the basis of the Americans with Disabilities Act or the Fair Housing Act or equivalent state statute, such waiver request shall be submitted to the ADA Coordinator, who shall have the authority to grant or deny such waiver. Appeals of the decision of the ADA Coordinator may be made in writing to the city/town administrator within ten working days of the ADA Coordinator's decision by any person directly impacted by the same.

If a waiver is sought with respect to the requirements of an ordinance or provision of the municipal code on the basis of any other federal or state law, such waiver request shall be submitted to the city/town administrator, who shall have the authority to grant or deny such waiver. Appeals of the decision of the city/town administrator may be made in writing to the board of mayor and aldermen submitted through the city/town recorder's office within ten working days of the city/town administrator's decision by any person directly impacted by the same.

MTAS recommends that the city adopt this or similar language as part of the next code-adopting ordinance (if a new code adoption is imminent) or simply as part of title 1 of the code.

Regarding your question on zoning modifications, MTAS is still researching. We do recommend that the city use a variance procedure for situations such as a setback requirement that would not allow for a ramp into a business. In addition, MTAS is still researching procurement issues. We will share information on other zoning and procurement ADA issues later.

MTAS hopes this information is helpful. Thanks for asking some hard questions! Let us know how we may assist further.

Attachment included: Sample "Notice under the Americans with Disabilities Act" (US Department of Justice)