



## Appendix B – Departmental Policy, Procedure, and Documentation Review

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Prepared by  **benesch**



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April 9, 2020

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Assistant Town Manager  
43 Hunter St.  
Apex, NC 27502

**Subject: Town of Apex – Draft Report on ADA Policies and Procedures Including Policy and Process Suggestions for Adoption or Consideration**

Dear Mr. Purvis:

As required by Task II under the ADA Self-Evaluation and Transition Plan project for the Town of Apex, Tindale Oliver has reviewed the requirements for programs and policies necessary for the Town to be compliant with the requirements of the Americans with Disabilities Act (ADA). The following information provides suggestions and determinations concerning the policies, procedures, and practices either currently employed by the Town or our suggested actions to meet minimum ADA requirements and to achieve full compliance with the law.

Normally, the Town's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom. In partnership with the Town, a document survey was prepared and distributed to all applicable Town departments outlining the documentation required of an ADA policy and procedures review. Our review of the existing Town policies and procedures as published or posted for public review included a discussion with Mr. Shawn Purvis, Assistant Town Manager, to discuss the review of policies and procedures.

## Title II Requirements and Findings

The Town has identified its policies and practices and their ADA Consultant has determined whether these policies and practices adversely affect the full participation of individuals with disabilities in its programs, activities, and services. In this regard, the Town should be mindful, that although its policies and practices may appear harmless, they may result in denying individuals with disabilities the full participation of its programs, activities, or services and should be systematically reviewed over time to ensure changed environments or processes have not affected policies or procedures. Areas that need careful examination include the following:

**Requirement 1:** The Town must provide an ADA Title II Notice that offers information on Title II requirements. Methods used to provide this information includes handbooks, manuals, and pamphlets that are distributed to the public to describe the Town's programs. In providing the notice, the Town must comply with Title II requirements for effective communications, including alternate formats, as deemed appropriate by the Town (see II-8.4000).



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**Finding:** This requirement has not been met. This document can be provided on the Town's website.

**Requirement 2:** The Town must designate a responsible employee and develop a grievance procedure to coordinate efforts and fulfill the Town's responsibilities under Title II. This includes the investigation of complaints made against the Town. The grievance procedure shall be adopted and published allowing for prompt and equitable resolution of complaints. The name, office address, and telephone number of the designated employee shall be made available (see II-8.5000).

**Finding:** This requirement has not been met. The Town shall designate either a current employee or hire a new employee to fill the role of the ADA Coordinator. This position will be charged with maintaining the ADA Transition Plan once complete, ensure that the Town's programs and services are accessible, and reviewing the complaints received through the grievance procedure. The grievance procedure set forth by the Town is in the Personnel Manual, Article X, and only allows for employees to file complaints. A grievance procedure shall be developed that is adopted by the Town Council, disseminated publicly (on the Town website and through other means), and denotes the ADA Coordinator's contact information.

**Requirement 3:** The Town must examine each program to determine whether any physical barriers to access exist. It should identify steps that need to be taken to enable these programs to be made accessible when viewed in their entirety. If structural changes are necessary, they should be included in the transition plan (see II-8.3000).

**Finding:** At the conclusion of the Town's ADA Self-Evaluation project, this requirement will have been met. However, it should be noted that the Town must carefully and methodically document all modifications it makes to each program and facility and ensure that all future changes are compliant with the ADA.

**Requirement 4:** The Town must review its policies and practices to determine whether any exclude or limit the participation of individuals with disabilities in its programs, activities, or services. Such policies or practices must be modified, unless they are necessary for the operation or provision of the program, service, or activity. The self-evaluation should identify policy modifications to be implemented and include complete justifications for any exclusionary or limiting policies or practices that will not be modified.

**Finding:** This memo documents the review of the Town's policies and practices and makes recommendations to bring them all into compliance with the ADA.

**Requirement 5:** The Town should review its policies to ensure that it communicates with applicants, participants, and members of the public with disabilities in a manner that is as effective as its communications with others. If the Town communicates with applicants and beneficiaries by telephone, it should ensure that TTY's or equally effective telecommunication systems are used to communicate with individuals with impaired hearing or speech. Finally, if the Town provides



telephone emergency services, it should review its policies to ensure direct access to individuals who use TDD's and computer modems.

**Finding:** There are currently no policies describing the Town's language access policy, availability of TTY, or alternate formats. There is a Telecommunications Device for the Deaf (TDD) policy in place for the Apex Police Department that can be used for both emergency and non-emergency calls. The policy outlines how to use the TDD, appropriate abbreviations, and how to communicate with someone who is deaf, hard of hearing or mute. The TDD policy can serve as a starting point for a town-wide TTY/language access policy. While the Equal Employment Opportunity (EEO) policy is explicit on the Human Resources webpage, there is no mention of offering employment applications in an alternate format by the Human Resources department or Government Jobs, which is the administrator of the employment applications website.

**Requirement 6:** The Town should review its policies to ensure that they include provisions for screen readers for individuals with visual impairments; interpreters or other alternative communication measures, as appropriate, for individuals with hearing impairments; and amanuenses for individuals with manual impairments. A method for securing these services should be developed, including guidance on when and where these services will be provided. Where equipment is used as part of the Town's program, activity, or service, an assessment should be made to ensure that the equipment is usable by individuals with disabilities, particularly individuals with hearing, visual, and manual impairments. In addition, the Town should have policies that ensure that its equipment is maintained in operable working order.

**Finding:** The Town of Apex does not have a policy that includes provisions for readers, interpreters, other alternative communication measures or assistive listening equipment. These include interpreters, alternate formats for documents, and listening devices. This type of information can be outlined in the ADA Title II Notice and in a communication policy which some municipalities have deemed a "Language Access Policy". This policy shall contain how a citizen can request accommodations, a maintenance program for the equipment, and who is charged with disseminating the equipment. A method to secure alternative communication measures should be outlined in the policy as well as the ADA Coordinator's contact information, when appointed. Notable inclusions of these requirements can be found in the Apex Parks, Recreation, and Cultural Resources department which offers specialized recreation and reasonable modifications through inclusion services. For example, the Halle Cultural Arts Center should have a policy in place for assistive listening equipment to be provided for its productions.

**Requirement 7:** A review should be made of the procedures to evacuate individuals with disabilities during an emergency. This may require the installation of visual and audible warning signals and special procedures for assisting individuals with disabilities from a facility during an emergency.

**Finding:** It is recommended that individuals who need special assistance based on disability shall be provided an emergency action plan in addition to the already published Incident Weather and Emergency Closings Policy. In accordance with Title II, ensure that visual and audible warning signals are in working condition in all Town facilities. Article V, Section 11 of the Personnel Manual describes workplace safety but fails to mention the evacuation procedures for individuals with disabilities. Should the Town “establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods”, individuals with disabilities shall be considered in the planning process.

**Requirement 8:** A review should be conducted of the Town's written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.

**Finding:** There were no instances where individuals with disabilities were portrayed in an offensive or demeaning manner.

**Requirement 9:** If the Town operates historic preservation programs, it should review its policies to ensure that it gives priority to methods that provide physical access to individuals with disabilities.

**Finding:** The Town has a historical society that provides tours of the Maynard-Pearson House, facilitates membership by holding meetings and hosting volunteer events, and supports other events throughout the year across the Town. Ensure that the events sponsored by the historical society are accessible in addition to where the meetings and events are held. Since the public is invited to participate in the society’s events and tours, the historical buildings shall also be made accessible. A policy regarding physical access to individuals with disabilities to historic structures may be included in the Code of Ordinances. For example, if the Maynard-Pearson House is not accessible, it is recommended that the meetings be moved to a nearby accessible facility such as a library or the Town Hall.

**Requirement 10:** The Town should review its policies to ensure that its decisions concerning a fundamental alteration in the nature of a program, activity, or service, or a decision that an undue financial and administrative burden will be imposed by Title II, are made properly and expeditiously.

**Finding:** Any alteration in a policy concerning a fundamental alteration in the nature of a program, activity, or service that may affect people with disabilities will be reviewed by the Town’s ADA Coordinator, when one is appointed. It was found that only the Parks, Recreation, and Cultural Resources department has an explicit reasonable accommodations policy in place.

**Requirement 11:** The Town should review its policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings.

**Finding:** There are no explicit policies in place describing access to public meetings for individuals with mobility impairments. This can be included in the ADA Title II Notice to notify the community that reasonable accommodations can be provided for all public meetings. It

would be ideal for all public meetings to take place in a readily accessible location. The Parks, Recreation, and Cultural Resources department has an explicit policy in place to provide reasonable accommodations and a point of contact.

**Requirement 12:** The Town should review its employment practices to ensure that they comply with other applicable nondiscrimination requirements, including section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission.

**Finding:** Upon review of the Town of Apex Personnel Manual, it was found that all available employment policies are in compliance with Title II. The Personnel Manual contains an Equal Employment Opportunity and Nondiscrimination Policy, the Harassment Policy, Workplace Conduct Policy, Disability Non-Discrimination policy, discrimination procedures, and miscellaneous personnel policies. Article VI, Sections 1 and 2 briefly describes the Town's EEO policy and how it is implemented as to not discriminate in its hiring processes and wherever applicable. Article V, Section 8 prohibits workplace harassment based upon a "person's or persons' race, color, religion, creed, sex, national origin, age or disability". The Personnel Manual is not provided on the Town's website but is fully accessible. Additionally, the Human Resources department webpage states that "Employment applications are only accepted online. Application assistance and online access is available at the Human Resources Office". To ensure individuals with disabilities have full access to employment, it is recommended that the Town add an option for applicants to request any specific alternative they may need to apply to a position.

The following sections of the Personnel Manual were reviewed for ADA compliance:

- Equal Employment Opportunity and Nondiscrimination Policy
  - Article IV, Personnel Manual
- Harassment Policy
  - Article V, Section 11, Personnel Manual
- Personnel Policies and Procedures
  - Personnel Manual
- Workplace Conduct Policy
  - Article IX, Personnel Manual
- Disability Non-Discrimination
  - Article IV, Personnel Manual
- Disciplinary Procedures
  - Article V, Section 11

**Requirement 13:** The Town should review its building and construction policies to ensure that the construction of each new facility or part of a facility, or the alteration of existing facilities after January 26, 1992, conforms to the standards designated under the Title II regulation.

**Finding:** The Town does not provide information in its Town code regarding building and construction policies that consider the standards designated under the Title II regulations. It is suggested that this requirement be met in Chapter 5, Article II of the Code of Ordinances.

**Requirement 14:** A review should be made to ascertain whether measures have been taken to ensure that employees of the Town are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.

**Finding:** Article VI, Sections 1 and 2 briefly describes that no employee shall suffer discrimination because of age, sex, race, color, religion, disability, national origin, political affiliation, or marital status. Additionally, Article VI states that “Applicants with physical disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential duties with or without reasonable accommodation”. This section does not describe how or if employees are trained on ADA and EEO/AA issues. Once the ADA Coordinator is appointed, training shall be provided to all employees to ensure their compliance with ADA and EEO.

**Requirement 15:** If the Town limits or denies participation in its programs, activities, or services based on drug usage, it should make sure that such policies do not discriminate against former drug users, as opposed to individuals who are currently engaged in illegal use of drugs. Should the Town identify policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, it should take immediate remedial action to eliminate the impediments to full and equivalent participation. Structural modifications that are required for program accessibility should be made as expeditiously as possible and in concert with the final ADA Transition Plan.

**Finding:** There is no published policy that limits or denies programs, activities, and services to any individual.

## Additional Recommendations

1. Ensure that the policies and procedures posted on the Town website can be retrieved in an alternate format. To ensure accessibility of policies and procedures for persons with disabilities, it is suggested that a note be provided on the Town’s Website Accessibility web page or another accessible web page referencing the ADA Coordinator, when appointed, for needed assistance or additional information.
2. Reasonable accommodations must be provided in Town programs, activities, and services per Title II. There shall also be provisions to offer programs and activities in accessible locations. In the case of Town Council Meetings, published policies do not provide information as to how to request accommodations or who to contact. It is suggested that the Town provide a web page offering information regarding reasonable accommodations, which includes the ADA Coordinator’s contact information, when one is appointed.

3. Programs shall provide equal opportunity for participation of persons with varying disabilities. Ensure that programs including but not limited to; Town-wide events such as PeakFest, Apex Night Out, Think Apex Day, and senior activities and summer camps are accessible to the highest extent possible under the ADA.
4. Policies, programs, and procedures that are provided for public consumption on the Town website shall be accessible. These documents shall include any information that is pertinent to the public. All scanned documents shall be reexamined and uploaded in a PDF format. The Town website offers a platform for disseminating a large amount of information and shall be used as a vehicle to provide the public with pertinent information regarding the grievance procedure and reasonable accommodations.
5. To assist in implementing new policies, the Town should consider implementing a Disability Advisory Board or Committee charged with reviewing of policies, procedures, and programs for ADA compliance. When appointed, the ADA Coordinator will have the ability to form this group to function in an adversarial role to the Town.

The Town of Apex must take action to remediate all the barriers to accessibility in each of its programs, policies, and procedures. The community should remain engaged and informed of this process to ensure that the needs of the community are met. To do so, the Town shall provide information on an ongoing basis and whenever necessary. The Town should take care to revise policies and procedures to reflect the ongoing needs of the community by providing a forum for citizens.



## Example Title II Notice

### NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Town of Apex will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

*Employment:* The Town of Apex does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

*Effective Communication:* The Town of Apex will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the Town of Apex's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

*Modifications to Policies and Procedures:* The Town of Apex will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in the Town of Apex offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the Town of Apex should contact (Insert ADA Coordinator contact information) as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the Town of Apex to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden. Complaints that a program, service, or activity of the Town of Apex is not accessible to persons with disabilities should be directed to (Insert ADA Coordinator contact information).

The Town of Apex will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

### Example Grievance Procedure

Town of Apex

Grievance Procedure for

The Americans with Disabilities Act Relating to the Town's Programs,  
Services, and Activities\*

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the Town of Apex. The Town of Apex's Human Resources policies governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request. The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

(Insert ADA Coordinator contact information)

Within 15 calendar days after receipt of the complaint, (Insert ADA Coordinator) will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, unless another date is agreed to in writing, (Insert ADA Coordinator) will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the Town of Apex and offer options for substantive resolution of the complaint.

If the response by (Insert ADA Coordinator) does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the (Insert Town Manager).

Within 30 calendar days after receipt of the appeal, the (Insert Town Manager) or will meet with the complainant to discuss the complaint and possible resolutions. Within 30 calendar days after the meeting, the (Insert Town Manager) will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by (Insert ADA Coordinator), appeals to the (Insert Town Manager), and responses from these two offices will be retained by the Town of Apex for at least three years.