

AMERICANS WITH DISABILITIES ACT (ADA) POLICY

The federal Americans with Disabilities Act (ADA) grants civil rights protection to individuals with disabilities by guaranteeing equal opportunities for individuals with disabilities in such areas as employment, public accommodations, transportation, and government services. In the employment context, the ADA prevents employers from discriminating against an individual with a disability in hiring or promotion if the individual is otherwise qualified for the job.

The City of Holyoke provides an equal opportunity for individuals with disabilities to participate in City employment, including job applications, hiring, and promotion. Any City employee causing or contributing to discrimination against a job applicant or another employee based upon, or in relation to, his disability will be subject to disciplinary action, up to and including termination.

1.01 Overview

The City of Holyoke's Americans with Disabilities Act (ADA) Policy describes the City's policy and procedures for compliance with the Americans with Disabilities Act (ADA), a federal law enacted in 1990. Because the City is an employer, its employment activities are covered under Title I of the ADA. In addition, Title II of the ADA covers state and local governments, including the City, and this includes its departments, divisions, agencies, and programs. For example, activities of City departments and City-sponsored public meetings and hearings, such as City Council meetings, are covered under Title II of the ADA.

The City's Americans with Disabilities Act (ADA) Policy is intended to be used solely as a guideline, and its applicability to specific programs or employment within the City may vary. The City's Americans with Disabilities Act (ADA) Policy is not intended to create additional rights or remedies beyond those rights and remedies that the ADA is intended to address.

1.02 ADA Definition of "Disability"

Under the ADA, an individual with a "**disability**" is someone who:

- (1) Has a physical or mental impairment that substantially limits one or more major life activities;
- (2) Has a record of such an impairment; or
- (3) Is regarded by others as having such an impairment.

1.02.1 Physical or Mental Impairment That Substantially Limits One or More Major Life Activities

An "**impairment**" under the ADA is a physiological or mental disorder.

A “**physical impairment**” is defined as “any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine.”

A “**mental impairment**” is defined as “any mental or psychological disorder, such as an intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities.”

Simple physical characteristics, therefore, such as eye or hair color, left handedness, or height or weight within a normal range, are not impairments. A physical condition that is not the result of a physiological disorder, such as pregnancy, or a predisposition to a certain disease would not be an impairment. Similarly, personality traits such as poor judgment, quick temper, or irresponsible behavior are not themselves impairments. Environmental, cultural, or economic disadvantages, such as lack of education or a prison record, also are not impairments.

To be a disability covered under the ADA, an impairment must substantially limit one or more “**major life activities.**” These are basic activities, including major bodily functions, that most people in the general population can perform with little or no difficulty. Examples include, but are not limited to:

- Walking;
- Seeing;
- Speaking;
- Hearing;
- Breathing;
- Learning;
- Performing manual tasks;
- Working; and
- Caring for oneself.

Under the ADA, the determination of whether an individual’s impairment significantly limits a major life activity should be made without regard to any “mitigating measures” (e.g., assistive device or medication that an individual may use). In other words, an individual is considered to have a disability even if medications, assistive devices, or other mitigating measures reduce or eliminate the affected impairment below that of a substantial limitation of a major life activity.

The second and third parts of the ADA definition of disability include people who may or may not actually have such an impairment, but who may be subject to

discrimination because they have a record of, or are regarded as, having such an impairment.

1.02.2 Record of a Substantially Limiting Impairment

People who have a history of an impairment that substantially limits one or more major life activities may fall within the protections afforded under the ADA, whether or not they currently are substantially limited. For example, people with a history of cancer, heart disease, or other debilitating illness, whose illnesses are either cured, controlled, or in remission, are covered under the ADA, as are people with a history of mental illness.

People who may have been misclassified or misdiagnosed as having a disability are also covered under the ADA. For example, a person who may at one time have been erroneously classified as having mental retardation or having a learning disability is covered. These individuals have a record of disability.

1.02.3 Regarded as Having a Substantially Limiting Impairment

People who are not substantially limited in a major life activity are covered under the ADA if they are subject to discriminatory treatment because they are perceived to have such a limitation. For example, a person with a prominent facial disfigurement, or a person rumored to be infected with HIV (even though he or she does not have such infection), may be subject to discriminatory treatment, even though he or she is not substantially limited.

1.02.4 Current Illegal Drug Use Is Excluded Under the ADA

A person who currently uses drugs illegally is not protected by the ADA as an “individual with a disability” when an employer acts on the basis of such use. However, former drug addicts who have been successfully rehabilitated may be protected by the ADA.

1.02.5 Discrimination Based on a Relationship or Association with a Person with a Disability Is Prohibited under the ADA

Discrimination against any individual based on the individual’s relationship or association with a person with a disability is also prohibited under the ADA. For example, it would be illegal for an employer not to hire a job applicant who has a partner, child, or parent with a disability, based on a fear of absenteeism.

1.03 General Nondiscrimination

Under the ADA, neither the City nor any of its departments may refuse to allow a person with a disability to participate in any service, program, or activity solely because the person has a disability. The City must provide a **reasonable accommodation** to a person

with a disability who meets essential eligibility requirements of the service, program, or activity unless the provision of such accommodation would fundamentally alter the nature of the services, program, or activity, or would be an undue hardship.

Generally, the City must provide all programs and services in an integrated setting rather than create special programs just for people with disabilities. Separate or different measures may, under limited circumstances, be appropriate to ensure equal opportunity. All City-sponsored public meetings and hearings must be held only in locations that are accessible to people with disabilities, including people who use wheelchairs.

1.03.1 Reasonable Modifications in Policies and Procedures

The City must make reasonable modifications to policies, practices, and procedures that create barriers to equal access for individuals with disabilities, unless such modifications would fundamentally alter the nature of the program or services, or cause an undue hardship. The City adheres to the principle that eligible individuals with disabilities must be provided an equally effective opportunity to participate in, or benefit from, the City's programs and services, subject to the requirements discussed above.

The ADA provides for equality of opportunity but does not guarantee equality of results. The City may not impose eligibility criteria for participation in its programs, services, or activities that either screen out or tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program, or activity. For example, a City recreational program could not impose a blanket requirement that all wheelchair users bring an attendant in order to participate in the program.

1.03.2 Safety Issues and Surcharges

The City may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the City must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.

Although compliance may result in some additional cost, the City will not place a surcharge on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses. For example, a City program could not charge extra for a participant who is deaf in order to cover the cost of sign language interpreters.

1.03.3 Contracts, Licenses, and Certifications

The City will not discriminate on the basis of disability in contracting for the purchase of goods and services. City contracts should contain civil rights and nondiscrimination language that includes disability as a protected category.

The City will not discriminate on the basis of disability in its licensing, certification, and regulatory activities. A person is a “qualified individual with a disability” with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification.

1.04 Employment and Reasonable Accommodations

“Reasonable accommodation” is a key nondiscrimination requirement of the ADA because of the special nature of discrimination faced by people with disabilities. A reasonable accommodation is any modification or adjustment in the work environment that enables a qualified person with a disability to: (i) apply for a job; (ii) perform essential job functions; or (iii) enjoy the benefits and privileges of the facilities provided by the employer.

Many people with disabilities can perform jobs without any need for accommodations, but many others are excluded from jobs that they are qualified to perform because of unnecessary rules, policies, or other barriers in the workplace and the work environment. The ADA recognizes that such barriers may discriminate against qualified people with disabilities just as much as overt exclusionary practices. For this reason, the ADA requires reasonable accommodation as a means of overcoming unnecessary barriers that prevent or restrict employment opportunities for otherwise “qualified individuals with disabilities.”

A **“qualified individual with a disability”** is an individual with a disability who meets the skill, experience, education, and other job-related requirements of a position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of a job.

Under the ADA, when an individual with a disability is qualified to perform the essential functions of a job—except for functions that cannot be performed because of disability-related limitations and existing job barriers—the City must try to find a reasonable accommodation that would enable this person to perform these functions, unless doing so would create an undue hardship or would fundamentally alter the nature of the job.

In accordance with the employment provisions of the ADA, subject to the above, the City will provide reasonable accommodations to qualified municipal job applicants and to qualified employees with disabilities.

Examples of common types of reasonable accommodations that the City may be required to provide, unless doing so would create an undue burden or would fundamentally alter the nature of the job, include:

- Modified work schedules or reallocation of non-essential tasks;
- Obtaining or modifying equipment or devices;
- Modifying examinations, training materials, or policies;

- Providing qualified readers and interpreters;
- Reassignment to a vacant position;
- Permitting use of accrued paid leave or unpaid leave for necessary treatment;
- Providing reserved parking for a person with a mobility impairment; and
- Allowing an employee to provide equipment or devices that an employer is not required to provide.

A reasonable accommodation must be an effective accommodation. It must provide an opportunity for a qualified person with a disability to achieve the same level of performance or to enjoy benefits or privileges equal to those of an average similarly situated nondisabled person. However, the accommodation does not have to ensure equal results or provide exactly the same benefits or privileges.

A reasonable accommodation need not be the best accommodation available, as long as it is effective for the purpose; that is, it gives the qualified person with a disability an equal opportunity to be considered for a job, to perform the essential functions of the job, or to enjoy equal benefits and privileges of the job.

The City is not required to provide an accommodation that is primarily for personal use. Reasonable accommodation(s) apply to modifications that specifically assist a qualified individual in performing the duties of a particular job. Equipment or devices that assist a person in daily activities on and off the job are considered personal items that the City is not required to provide. However, in some cases, equipment that otherwise would be considered “personal” may be required as an accommodation if it is specifically designed or required to meet job-related rather than personal needs. For example, it may be a reasonable accommodation to provide an employee who has a visual impairment with eyeglasses that are specifically needed to use a computer monitor.

Reasonable accommodations need only be provided to qualified individuals who identify themselves as having a disability and usually if they have requested a reasonable accommodation. **The City is not required to provide an accommodation if the City is unaware of the need.** However, the City is responsible for notifying job applicants and employees of its obligation to provide accommodations for otherwise qualified individuals with disabilities.

1.04.1 Undue Hardship and Fundamental Alteration of the Program

The City is not required to make an accommodation if it would impose an undue hardship on municipal operations. An “**undue hardship**” is an action that requires “significant difficulty or expense” when considered in relation to certain factors, including the size of the employer, the resources available, and the nature of the operations. Whether or not a particular accommodation will impose an undue hardship on the City must always be determined on a **case by case basis**.

The City is not required to modify its policies, practices, or procedures if it can demonstrate that such modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

Before a Department Head or supervisor denies any request for a reasonable accommodation or concludes that a particular accommodation would result in an undue hardship or fundamental alteration of the program, the Department Head or supervisor must consult with the Personnel Administrator who will make the ultimate determination of whether a reasonable accommodation is required by law.

If it is determined that a particular accommodation would impose an undue hardship or fundamental alteration of the program, the Department Head and the Personnel Administrator still must consider whether there are alternative accommodation(s) that would not impose such hardship or fundamental alteration of the program. If the cost of an alternate accommodation would still impose an undue hardship on the City, the employee or applicant should be given the option of providing the accommodation himself or herself, or paying that portion of the cost that would constitute an undue hardship, if applicable.

1.04.2 Process for Providing Reasonable Accommodations

- (1) The qualified employee or job applicant has the responsibility to inform his/her Department Head or the Personnel Administrator that some adjustment or change is requested either to participate in the application process or to perform essential functions of a job. In all such cases, the employee or job applicant should be provided with a copy of the City's Americans with Disabilities Act (ADA) Policy.
- (2) If an accommodation is requested, documentation of disability and/or functional limitation(s) may be required to support the request. Requests for accommodations should be carefully evaluated, in consultation with the employee or job applicant, to ensure that the accommodation is reasonable and effective. All such requests will be treated with confidentiality.
- (3) If the reasonable accommodation being requested is relatively simple and straightforward, the Department Head can provide the accommodation without notifying the Personnel Administrator. If the accommodation being requested is less clear or more complex, there may need to be a dialogue between the employee or job applicant, the Department Head, and the Personnel Administrator. The employee or job applicant should complete and sign a **Reasonable Accommodation Request Form**, which the

Personnel Administrator shall provide upon request to the Department Head or to the employee or job applicant.

- (4) Upon receipt of the completed Reasonable Accommodation Request Form, the Personnel Administrator will make a determination as to whether additional medical documentation of the qualified employee's or job applicant's disability is necessary to assist the process of determining what reasonable accommodations are needed. If such documentation is necessary, the Personnel Administrator will provide the employee or job applicant with a **Medical Provider Authorization to Release Documentation of Disability Form**, which the Personnel Administrator shall provide upon request to the Department Head or to the employee or job applicant. The employee or job applicant should complete and sign the Medical Provider Authorization to Release Documentation of Disability Form within a reasonable time period.
- (5) Upon receipt of the completed Medical Provider Authorization to Release Documentation of Disability Form and all related documentation, the Personnel Administrator, in consultation with the Department Head and the qualified employee or job applicant, will make a determination about what accommodation(s) may be reasonable and effective, given the particular circumstances of the job position in question. This determination will be made within a reasonable period after receiving the request and all necessary medical documentation. Once this determination is made, the Department Head and the Personnel Administrator will develop and implement a plan for providing the reasonable accommodation(s) in a timely fashion.
- (6) Everyone involved in the process of developing and implementing the accommodation(s) will observe strict confidentiality procedures in order to uphold the rights of the employee or job applicant with a disability. All documentation collected during this process should be kept in a confidential file, separate from the employee's or job applicant's regular personnel file.

1.05 Building Accessibility

Under the ADA, the City is required to operate all its activities, services, and programs so that, when viewed in their entirety, they are readily accessible to and usable by qualified individuals with disabilities. Consequently, qualified individuals with disabilities cannot be excluded from City programs, services, and activities because buildings are inaccessible. However, the City need not remove physical barriers, such as stairs, in all

existing buildings, as long as it makes its programs accessible to individuals who are unable to use an inaccessible existing facility.

The City can provide the services, programs, and activities offered in an inaccessible building to individuals with disabilities through alternative methods, if physical barriers are not removed, such as by relocating a service to an accessible facility (e.g., moving a public information office from the third floor to the first floor of a building), or by providing benefits or services at an individual's home, or at an alternative accessible site.

Notwithstanding the foregoing, all City-sponsored public meetings and hearings must be held in locations that are accessible to people with disabilities, including people who use wheelchairs.

1.06 Communication Accessibility

The City is committed to ensuring that its communications with individuals with disabilities are as effective as communications with others. In order to provide equal access, the City will make available appropriate auxiliary aids and services where necessary to ensure effective communication. Auxiliary aids and services include a wide range of services and devices that promote effective communication. However, the City is not required to provide a particular auxiliary aid or service if to do so would result in a fundamental alteration of the service, program, or activity, or an undue hardship.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the needs of the individual and the length and complexity of the communication involved. A simple exchange of written notes may be all that is necessary for a brief transaction with a deaf person. Sign language or oral interpreters, for example, may be required when the information being communicated in a transaction with a deaf individual is complex or is exchanged for a lengthy period of time (e.g., a lecture or meeting). Factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.

Written communications provided by the City are subject to the requirement for effective communication. Thus, when a City department provides information in written form, it must, when requested, make that information available to individuals with vision impairments in a form that is usable by such individuals. Conversely, when City communications are customarily only in electronic format (e.g., web pages or e-mail), that information should be provided in alternative formats upon request to individuals whose disability prevents them from accessing the particular electronic format.

The audio portion of television and videotape programming produced by the City is subject to the requirement to provide equally effective communication for individuals with hearing impairments. Closed captioning of such programs is sufficient to meet this requirement.

When an auxiliary aid or service is required, the City must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must give primary consideration to the choice expressed by the individual. **“Primary consideration”** means that the City must honor the choice, unless it can demonstrate that another equally effective means of communication is available, or that use of the means requested would result in a fundamental alteration in the service, program, or activity, or in undue financial and administrative burdens.

It is important to consult with the individual to determine the most appropriate auxiliary aid or service because the individual with a disability is most familiar with his or her needs and is in the best position to determine what type of aid or service will be effective.

For assistance in determining the appropriate auxiliary aids and services, contact the Personnel Administrator.

1.06.1 Examples of Auxiliary Aids and Services for Effective Communication

Examples of auxiliary aids and services that may be effective for individuals who are **deaf or hard of hearing** may include, but are not limited to:

- Qualified sign language interpreters
- Note takers
- Computer aided real-time transcription (CART)
- Telephone handset amplifiers
- Individual assistive listening devices
- Open and closed captioning
- Telecommunications devices for deaf persons (TTYs or TDDs)
- Exchange of written notes

Examples for individuals with **vision impairments** may include, but are not limited to:

- Qualified readers
- Taped texts
- Audio recordings
- Braille materials
- Large print materials
- Screen readers

Examples for individuals with **speech impairments** may include, but are not limited to:

- TTYs or TDDs
- Speech synthesizers

1.07 ADA Public Notification

As part of the City's ongoing efforts to achieve compliance with the ADA, a public notice entitled "**City of Holyoke – Americans with Disabilities Act (ADA) Public Notice**" must be posted in each City building. This public notice gives job applicants, program participants, beneficiaries, employees, and other interested persons essential information about the City's general ADA nondiscrimination policies. It also informs the public to contact the Personnel Administrator with questions, complaints, or requests for additional information concerning the City's ADA policies. Finally, the public notice notifies members of the public who have communication disabilities that the City is prepared to provide auxiliary aids and services upon request to ensure access to all City programs, services, and activities.

All Department Heads should ensure that the City's public notice is posted on an ongoing basis in a prominent public location within each building where City offices are located. In addition, brochures, flyers, meeting announcements, newsletters, and all other publications produced by any City department for distribution to the public should include the following "short form" notice:

- **The City of Holyoke does not discriminate on the basis of disability. The City may provide auxiliary aids and services, written materials in alternative formats, and reasonable modifications in policies and procedures to qualified individuals with disabilities. For information, contact the Personnel Administrator, 536 Dwight Street, Suite 7, Holyoke, MA, 01040, (413) 322-5555.**

1.08 Maintenance of Accessibility Features in City Facilities

It is the City's responsibility, under the ADA, to maintain, in good working order, all equipment and features of City facilities that are required to provide ready access to individuals with disabilities. Wherever an accessible route is provided by the City to one of its facilities, this route must remain accessible and not blocked by obstacles such as furniture, filing cabinets, and potted plants. An isolated instance of placement of an object on an accessible route would not be a violation of the ADA, if the object is promptly removed. Similarly, accessible entrance doors must be kept unlocked (and automatic door openers kept active) whenever a City facility is open for business, including for public meetings and hearings (whether held during daytime hours, evenings, or weekends).

All such equipment should be tested on a regular basis to ensure it is in good working order. If the equipment is not working properly, Department Heads shall undertake immediate corrective measures to repair the equipment. All accessibility equipment should be on a routine schedule of preventive maintenance. Chronic disrepair of accessibility equipment, despite repeated efforts to fix and maintain the equipment, should trigger an assessment of whether the equipment should receive a more thorough

overhaul or a complete replacement. Depending on costs and the department's operating budget, this may necessitate a request for an appropriation to ensure legal compliance.

Mechanical failures in equipment such as elevators or automatic door openers occur from time to time. Isolated interruptions in use due to servicing and repairs are not in violation of the ADA. The City's obligation to ensure that facilities are readily accessible to, and usable by, individuals with disabilities would be compromised, however, if repairs are not made promptly or if improper or inadequate maintenance causes repeated and persistent failures. Therefore, all Department Heads should enact procedures to ensure these obligations are met. Every Department Head should examine each facility over which he or she exercises responsibility, and be familiar with the equipment necessary to provide access, such as wheelchair lifts, elevators, and automatic doors.

1.09 ADA Internal Grievance Procedure

Title I of the ADA makes it "...unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to...employment." Title II of the ADA states, in part, that "...no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination..." in programs or activities sponsored by the City.

The City of Holyoke has an internal grievance procedure to provide for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice regulations implementing Title I and Title II of the Americans with Disabilities Act. It is the goal of this procedure, in accordance with the ADA, to provide for local investigation and mediation of complaints alleging violation of the ADA. This procedure will supplement independent administrative and judicial enforcement procedures created by the ADA, the Rehabilitation Act of 1973, and G. L. c. 151B.

Complaints should be addressed to the Personnel Administrator, 536 Dwight Street, Suite 7, Holyoke, MA, 01040, (413) 322-5555, the individual who is charged with coordinating ADA compliance efforts in the City.

- (1) A complaint may be filed orally or in writing and shall contain the name and address of the person filing it and a brief description of the alleged violation of the regulations.
- (2) A complaint must be filed within one hundred and eighty (180) days after the complainant becomes aware of the alleged violation.
- (3) Following the filing of a complaint with the Personnel Administrator, the Personnel Administrator or his or her designee shall conduct an investigation, and mediation when appropriate. The Personnel Administrator or his or her designee

will, whenever possible, make a good faith effort to mediate the complaint to the satisfaction of the parties and to complete the process within ninety (90) days.

- (4) The Personnel Administrator or his or her designee shall conduct an investigation, the conclusion of which shall be either successful mediation by agreement of the parties or notice to the complainant regarding additional processes and remedies. During the course of this grievance procedure, the Personnel Administrator or his or her designee shall consult with the City Solicitor.
- (5) A written statement describing the mediated resolution, if any, shall be issued by the Personnel Administrator or his or her designee and a copy forwarded to the parties and the City Solicitor. If no resolution is reached, the Personnel Administrator or his or her designee shall notify the City Solicitor that the complainant has been advised of additional processes and remedies, and the grievance procedure hereunder shall be deemed completed and closed.
- (6) The Personnel Administrator shall maintain a written record of each complaint filed, the action taken, and the disposition of the complaint.
- (7) The right of a person to prompt and equitable resolution of the complaint filed hereunder shall not be impaired by that person's pursuit of other remedies, such as the filing of an ADA complaint with the responsible federal department or agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.