



City of Grand Island

Tuesday, March 23, 2010

Council Session

Item G10

#2010-78 - Approving the Adoption of the Resolution to Comply with American's with Disability Act (ADA) and Section 504 of the Rehabilitation Act

Staff Contact: Steven P. Riehle, Public Works Director

Council Agenda Memo

From: Steven P. Riehle, Public Works Director

Meeting: March 23, 2010

Subject: Approving the Adoption of a Resolution to Comply with Section 504 of the Rehabilitation Act (Section 504) and the American's with Disability Act (ADA)

Item #'s: G-10

Presenter(s): Steven P. Riehle, Public Works Director

Background

Grand Island is a Local Public Agency (LPA) in the State of Nebraska receiving federal transportation funding from the Federal Highway Administration (FHWA). The NDOR administers those funds to the city following guidelines detailed in the LPA manual.

The City Council passed a resolution at the October 27, 2009 meeting for the following four administration components:

- Consultant selection process
- National Environmental Policy Act (NEPA)
- Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act)
- Financial Management Systems (certification attached to resolution)

As a sub-recipient of federal funding, the City of Grand Island is also required to have a policy and implementation plan for Section 504 of the Rehabilitation Act of 1973 & the American's with Disability Act of 1990 (ADA) in order to advance or receive funds for federal-aid projects.

At tonight's meeting council is being asked to also approve the adoption of a resolution to comply with the requirements in Title VI of the Civil Rights Act of 1964.

Discussion

If a governmental department receives even one dollar of Federal assistance, then all of the programs and activities of that governmental department are covered by Section 504 and the ADA.

For federal aid transportation projects, the NDOR has stipulated that LPA's take the following steps regarding Section 504 and the ADA:

1. Pass a resolution that:
 - a. Adopts and binds itself to comply with applicable laws, rules, regulations and requirements of ADA and Section 504
 - b. Designates a Section 504/ADA Compliance Coordinator.
2. Adopt a policy for Section 504/ADA Compliance that includes:
 - a. A Policy Statement
 - b. Authorities
 - c. Section 504/ADA Compliance Coordinator Responsibilities
 - d. Notice to the Public
 - e. Performance of an annual Self Evaluation
 - f. Implementation of a Transition Plan
 - g. Complaint Procedures
 - h. Reasonable

This action will also fulfill the Section 504 and ADA requirements for other federally funded programs and projects.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

Public Works Administration recommends that the Council approve the adoption of the resolution regarding Section 504/ADA and designate the City Administrator as Section 504/ADA Compliance Coordinator responsible for managing the Section 504/ADA process.

Sample Motion

Move to approve the adoption of the resolution on Section 504/ADA and designate the City Administrator as the Section 504/ADA Compliance Coordinator.

LOCAL PUBLIC AGENCY CITY OF GRAND ISLAND

SECTION 504 – REHABILITATION ACT OF 1973 AMERICANS WITH DISABILITIES ACT OF 1990

POLICY STATEMENT

The CITY OF GRAND ISLAND will ensure that no qualified disabled individual shall, solely on the basis of their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any of its programs, services, or activities as provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). The CITY OF GRAND ISLAND further ensures that every effort will be made to provide nondiscrimination in all of its programs or activities regardless of the funding source.

For this purpose, a disabled person is defined as any person who:

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment

AUTHORITIES

Section 504 of the Rehabilitation Act of 1973, as amended, provides that “No otherwise qualified disabled individual in the United States, as defined in section 7(6), shall, solely by reason of his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

29 USC 794 (October 29, 1992 to the Rehabilitation Act of 1973) substitutes “a disability” for “handicaps” and “disability” for “handicap”.

49 CFR Part 27.13 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, “This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance”.

49 CFR Part 28.102 (Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Transportation) states, “This part applies to all programs or activities conducted by the Department of Transportation except for programs and activities conducted outside the United States that do not involve individuals with disabilities in the United States.”

28 CFR Part 35 (Judicial Administration) states that: “The purpose of this part is to effectuate Subtitle A of Title II of the ADA which prohibits discrimination on the basis of disabilities by public entities.

49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, “The purpose of this part is to carry out the intent of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) as amended, to the end that no otherwise qualified disabled individual in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

49 CFR Part 28-140 (Employment) states that, “(a) No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Department,” and “(b) The definitions, requirements, and procedures of Section 504 of the Rehabilitation Act of 1973 (29 USC 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

29 CFR Part 1613 (Equal Employment Opportunity in the Federal Government) states that: "It is the policy of the Government of the United States . . . to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency."

42 USC Part 12101-12213 (The Americans with Disabilities Act of 1990) states that: "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

ORGANIZATION

The Section 504 / ADA Compliance Coordinator for the city of Grand Island is the CITY ADMINISTRATOR.

SECTION 504 / ADA COMPLIANCE COORDINATOR RESPONSIBILITIES

- Monitoring the LPAs current policies and practices for implementing 504/ADA
- Identifying shortcomings in compliance and developing remedies
- Evaluating remedial steps taken to eliminate the effects of discrimination
- Monitoring complaint procedures that incorporate appropriate due process standards and providing for prompt and equitable resolutions of complaints alleging an action prohibited by 504/ADA
- Processing the disposition of complaints filed under 504/ADA
- Ensuring agency compliance with 504/ADA
- Collaborating and coordinating with the heads of major divisions and departments to enable 504/ADA compliance efforts
- Establishing and maintaining collaborative relationships with critical external stakeholders, such as disability advocacy groups and organizations.
- Monitoring the agency's 504/ADA Transition Plan to ensure that all department facilities remain in compliance with applicable accessibility standards.
- Monitoring established procedures to ensure that requested auxiliary aids are provided for persons
- Conducting annual reviews of 504/ADA program areas.
- Conducting 504/ADA training programs for managers and employees
- Preparing a report of 504/ADA accomplishments and problem areas for the NDOR Annual Report to FHWA
- Monitoring the preparation of 504/ADA information for dissemination to the general public, including the "Notice to the Public" offer to provide reasonable accommodation, upon request.
- Identifying, investigating, and eliminating 504/ADA discrimination when found to exist.

SECTION 504/ADA NOTICE TO PUBLIC

The City of Grand Island does not discriminate on the basis of disability in admission of its programs, services, or activities, in access to them, in treatment of individuals with disabilities, or in any aspect of their operations. The City of Grand Island also does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. Questions, complaints, or requests for additional information or accommodation regarding Section 504 and the ADA may be forwarded to the designated Section 504/ADA Compliance Coordinator:

<i>Name and Title:</i>	<i>Jeff Pederson, City Administrator</i>
<i>Phone Number (Voice/TDD):</i>	<i>308-385-5444 extension 140</i>
<i>Office Address:</i>	<i>100 E 1st Street, Grand Island, Nebraska 68801</i>
<i>Days/Hours Available:</i>	<i>Monday through Friday / 8:00 a.m. to 5:00 p.m.</i>

SECTION 504/ADA SELF-EVALUATION

The city will perform a self evaluation of the Section 504/ADA process by July 1st of each calendar year.

SECTION 504/ADA TRANSITION PLAN

A Section 504/ADA transition plan was developed for accessibility in the public Right-Of-Ways in 2009. The city will perform a self evaluation of progress on the Section 504/ADA transition plan by July 1st of each calendar year.

COMPLAINT PROCEDURES

1. Any person who believes that they, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the LPA. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the City of Grand Island's Section 504/ADA Compliance Coordinator for review and action.
2. In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:
 - a) The date of alleged act of discrimination; or
 - b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the LPA or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the LPA, the person shall be interviewed by the Section 504/ADA Compliance Coordinator. If necessary, the Section 504/ADA Compliance Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the LPA's investigative procedures.
4. Within 10 days, the Section 504/ADA Compliance Coordinator will acknowledge receipt of the allegation, inform the complainant of procedures to be followed, and advise the complainant of other avenues of redress available, such as NDOR, USDOT or other applicable federal agency.
5. The LPA will advise NDOR (or other applicable federal agency) within 10 days of receipt of the allegations. Generally, the following information will be included in every notification:
 - a) Name, address, and phone number of the complainant.
 - b) Name(s) and address (es) of alleged discriminating official(s).
 - c) Basis of complaint (i.e., race, color, national origin or sex)
 - d) Date of alleged discriminatory act(s).
 - e) Date of complaint received by the LPA.
 - f) A statement of the complaint.
 - g) Other agencies (state, local or Federal) where the complaint has been filed.
 - h) An explanation of the actions the LPA has taken or proposed to resolve the issue raised in the complaint.
6. If the complaint involves a federal aid transportation project, the NDOR will forward the complaint to FHWA. The FHWA Office of Civil Rights will determine the appropriate individual and/or organization to conduct the

investigation. If the complaint involves a federal aid program or project that it not transportation related, the city will forward the complaint to the appropriate state or federal agency administering the grant.

7. Within 60 days, the Section 504/ADA Compliance Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the LPA. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
8. Within 90 days of receipt of the complaint, the head of the LPA will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with NDOR, USDOT or other applicable federal agency, if they are dissatisfied with the final decision rendered by the LPA. The Section 504/ADA Compliance Coordinator will also provide NDOR (or other applicable state or federal agency) with a copy of this decision and summary of findings upon completion of the investigation.
9. Any complaints received against the LPA should immediately be forwarded to NDOR (or other applicable federal agency) for investigation. The LPA will not investigate any complaint in which it has been named in the complaint.
10. Questions, complaints or requests for additional information or accommodation regarding Section 504 and the ADA may be forwarded to the Section 504/ADA Compliance Coordinator:

Name and Title: Jeff Pederson, City Administrator
Phone Number (Voice/TDD): 308-385-5444 extension 140
Office Address: 100 E 1st Street, Grand Island, Nebraska 68801
Days/Hours Available: Monday through Friday / 8:00 a.m. to 5:00 p.m.

REASONABLE ACCOMMODATION PROCEDURES

The city will develop reasonable accommodation procedures before July 1st of 2010 for incorporation into this policy.

ASSURANCES

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the CITY OF GRAND ISLAND desiring to avail itself of federal financial assistance from the US Department of Transportation (or other applicable federal agency), hereby gives assurance that no qualified disabled person shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this federal financial assistance.

The *CITY OF GRAND ISLAND* further assures that its programs will be conducted, and its facilities operated, in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR Part 35 and 42 USC 12101-12213.

Adopted this 23rd day of March, 2010 at Grand Island, Nebraska.

The City Council of the CITY OF GRAND ISLAND

Jose Zapata	Robert Niemann
Peg Gilbert	Scott Dugan
Kirk Ramsey	Robert Meyer
Larry Carney	Mitch Nickerson
Chuck Haase	John Gericke

Board/Council Member _____
Moved the adoption of said resolution
Member _____ Seconded the motion
Roll Call: ___ Yes ___ No ___ Abstained ___ Absent
Resolution adopted, signed and billed as adopted

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk

NDOR USE ONLY

Date Received: _____

Questionnaire Review:

NDOR Employee: _____

Title: _____

Date: _____

Next Step:

Letter of compliance: _____

Further review required: _____

RESOLUTION

Section 504 of the Rehabilitation Act of 1973 & Americans with Disabilities Act of 1990

CITY OF GRAND ISLAND

Resolution Number 2010-78

Whereas: Certain transportation facilities (roads, streets, trails, and others) in the CITY OF GRAND ISLAND have been designated as being eligible for federal funds by the Federal Highway Administration in compliance with federal laws pertaining thereto;

Whereas: The CITY OF GRAND ISLAND desires to continue to participate in Federal-Aid transportation construction programs;

Whereas: The Nebraska Department of Roads as a recipient of said Federal funds is charged with oversight of the expenditures of said funds;

Whereas: The CITY OF GRAND ISLAND as a sub-recipient of said Federal-Aid funding is charged with the responsibility of expending said funds in accordance with Federal and State law, the rules and regulations of the Federal Highway Administration, the requirements of the Local Public Agency (LPA) Guidelines Manual of the Nebraska Department of Roads and the Americans with Disabilities/Section 504 Policy of the CITY OF GRAND ISLAND and;

Whereas: The CITY OF GRAND ISLAND understands that the failure to meet all requirements for federal funding could lead to a project(s) being declared ineligible for federal funds, which could result in the CITY OF GRAND ISLAND being required to repay some or all of the federal funds expended for a project(s).

Be It Resolved: The City Council for the CITY OF GRAND ISLAND does hereby adopt and bind itself to comply with all applicable federal law, including the rules and regulations of the Federal Highway Administration, all applicable state law and rules and regulations (Nebraska Administrative Code) and the requirements of the LPA Guidelines Manual of the Nebraska Department of Roads and the Section 504/ Americans with Disabilities Policy of the CITY OF GRAND ISLAND.

Be It Further Resolved: The CITY OF GRAND ISLAND CITY COUNCIL does hereby designate the CITY ADMINISTRATOR as the Section 504/ADA Compliance Coordinator to be responsible for the management of the Section 504/ADA process.

Adopted this 23rd day of March, 2010 at Grand Island, Nebraska.

The City Council of the CITY OF GRAND ISLAND

Jose Zapata	Robert Niemann
Peg Gilbert	Scott Dugan
Kirk Ramsey	Robert Meyer
Larry Carney	Mitch Nickerson
Chuck Haase	John Gericke

Board/Council Member _____
Moved the adoption of said resolution
Member _____ Seconded the motion
Roll Call: ___ Yes ___ No ___ Abstained ___ Absent
Resolution adopted, signed and billed as adopted

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk