



# **ADA Report for Council**

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In late 2023, Council directed staff to research and report back potential alternatives regarding ADA compliance due to concerns raised during City Council meetings. Concerns included the potential requirement of push button/power assisted doors needing to be required as part of the Façade Improvement Program, and accessibility compliance concerns related to the new City Hall building. This report gathers the information requested of staff and outlines generically the requirements of ADA compliance.

## **Federal Requirements**

The Americans with Disabilities Act (ADA) was signed into law in 1990. An ADA Amendments Act was signed into law in 2008. While there are many components and regulations contained in the federal law, this information will pertain primarily to Title II and Title III categories.

### ***Title II***

This category is specific to compliance requirements for State and Local Governments. In general, it requires:

"The ADA is meant to ensure that people with disabilities can fully participate in all aspects of civic life. Under Title II, all state/local governments must follow the ADA regardless of their size."

"Title II of the ADA requires state/local governments to give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. State/local governments can't deny people with disabilities the chance to participate or make them participate in different programs than available to others." ([www.ada.gov](http://www.ada.gov))

More specifically it requires:

- Communicate with people with disabilities as effectively as you communicate with others.
- Make reasonable modifications to policies, practices, and procedures where needed to make sure that a person with a disability can access the state/local government's programs, services, or activities.
- Allow [service animals](#) to be with their person even if you have a no pets policy.
- Provide *program access* by ensuring that individuals with disabilities are not excluded from programs because existing buildings or facilities are inaccessible to them.
- Follow specific standards for physical accessibility when building or altering a building or facility.
- Follow specific requirements for ticket sales and testing accommodations.

([www.ada.gov](http://www.ada.gov))

Additional information regarding requirements and compliance can also be [found here](#) ([www.adaactionguide.org/ada-title-ii-requirements](http://www.adaactionguide.org/ada-title-ii-requirements)).

### ***Title III***

This category relates specifically to businesses open to the public.

"The ADA is meant to ensure that people with disabilities can fully participate in all aspects of life. Almost all types of businesses that serve the public, regardless of their size or the age of their buildings, must follow the ADA." ([www.ada.gov](http://www.ada.gov))

Businesses, including nonprofits, that serve the public (also called public accommodations) include, for example:

- Restaurants
- Hotels/motels
- Shops
- Movie theaters
- Private schools (including housing)
- Doctors' offices and private hospitals
- Day care centers
- Gyms

- Organizations offering courses or examinations related to:
  - Applications, licensing, certification or credentialing for professional or trade purposes
- Privately operated transit
- Examples of privately-operated transit include:
  - Intercity and charter buses
  - Hotel shuttles
  - Airport shuttles
- Commercial facilities (need only comply with requirements of the [ADA Standards for Accessible Design](#)). Examples of commercial facilities include:
  - Office buildings
  - Warehouses
  - Factories

#### General Requirements:

Businesses must provide people with disabilities an equal opportunity to access the goods or services that they offer.

#### Specific Requirements:

- Communicate with people with disabilities as effectively as you communicate with others.
- Make reasonable modifications to policies, practices, and procedures where needed.
- To make sure that a person with a disability can access the businesses' goods or services.
- Allow service animals to be with their person even if you have a no pets policy.
- Follow specific standards for physical accessibility when building or altering a building or facility.
- Follow specific requirements for ticket sales and testing accommodations.
- Remove architectural barriers in buildings when it is *readily achievable to do so*.

([www.ada.gov](http://www.ada.gov))





The City of Pasadena, CA, recorded a training regarding Title III compliance that provides a great overview, which is [linked here](#).

Compliance regarding ADA law is handled by the Department of Justice. While there is a significant amount of online materials and resources provided through their website [www.ada.gov](http://www.ada.gov), most of their compliance is handled on a complaint basis. City Staff attempted to arrange a federal representative/expert to provide a general presentation regarding ADA compliance but was unable to do so by the date of this report, and for the February 20, 2024, City Council meeting.

## **State Requirements**

The State Department of Commerce is the lead agency for North Dakota regarding Title II and Title III ADA training and technical assistance. State law requires:

"A state agency or the governing body of a political subdivision shall require from any individual preparing plans and specifications for a building or facility subject to the ADA of 1990 [Pub. L.101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that individual, in conformance with the ADA standards for accessibility. The completed ADA Accessibility Guidelines Conformance Statement is to be retained by the permitting jurisdiction or state agency, and a copy is to be filed with Commerce Community Services." ([Americans with Disabilities \(nd.gov\)](#))

Staff has not been able to identify any specific legislation put into effect regarding the requirement of push button/powered doors at this time. Staff has also been working to connect with a state representative for more information specific to State requirements regarding ADA compliance additional to Federal requirements. As of the date of this report and the Feb. 20, 2024, City Council meeting staff has not been successful in scheduling a meeting or a presentation.

## **International Building Codes**

Cities often adopt building codes as standards for construction of buildings to protect the interests of the public. These codes are very comprehensive and include standards for New Construction and Existing Buildings. Included in the building codes is requirements for compliance with Federal ADA laws. What is required and when can be complex and varies often on a case-by-case basis.



Staff has arranged for a representative from the International Code Council (ICC) to present to the Council at the Feb. 20, 2024, meeting regarding the requirements of ADA in the adopted building codes.

In addition, the Council requested the ability to consider requiring a higher standard regarding push button/power doors installation than is currently required in the building code. Staff has prepared a draft ordinance that would change this requirement for Council consideration. Staff still recommends the Council not move forward with adoption of this ordinance as it incurs additional regulation and cost to projects and business owners.

City Staff did reach out to the City of Mandan to get more information on their approach regarding push button/power doors for ADA accessibility. On Nov. 4, 2008, voters approved a ballot measure stipulating "installation of electric handicap accessible entrance doors is required on every building open to the public that has received public funds in any form whatsoever." As a result, any property receiving Storefront Improvement Funds since Nov. 14, 2008, has been subject to the requirement. Mandan staff believes an attempt was made to introduce state legislation similar to Mandan's ballot measure but it never made it out of committee with a Do Pass recommendation.

## **Financing**

### *Tax Deductions*

Council also directed staff to research and identify funding sources for ADA compliance. Staff has identified the following IRS Tax Benefits:

[Disabled Access Credit](#) (50% credit for business earning \$1 million or less, and 30 or less employees)

[Barrier Removal Tax Deduction](#) (up to \$15,000/year for qualified accessibility expenses)

[Work Opportunity Tax Credit](#) (credits for employing people with disabilities or veterans)

In looking across the country, there wasn't much else identified as potential funding mechanisms. One trend was that some localized community foundations provided grants to businesses related to accessibility costs.

### ***State law regarding use of tax revenue***

The potential of the City of Minot providing funding for an ADA Grant is a bit more challenging. State law includes a "gifting clause" which makes it difficult for cities in North Dakota to use taxpayer funds towards ADA. The law reads:

"The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

It is the opinion of the Finance Director and the City Attorney's Office that a grant program specific to ADA accessibility would not qualify as "support of the poor."

Case law also states:

"We conclude; however, statutorily authorized economic development programs constitute an "enterprise" under the plain language of N.D. Const. art. X, § 18 because they constitute an authorized project or undertaking that is especially difficult, complicated, or risky, or constitute systematic purposeful activity within the meaning of that provision." Hale v. State, 2012 ND 148, ¶ 30, 818 N.W.2d 684, 694. An enterprise is defined "to include 'a project or undertaking that is esp. difficult, complicated, or risky, ... a systematic purposeful activity.'" Haugland v. City of Bismarck, 2012 ND 123, ¶ 34, 818 N.W.2d 660, 675 citing Meriam-Webster's Collegiate Dictionary 167 (11<sup>th</sup> ed.2005).

It is the opinion of the Finance Director and the City Attorney's Office that an ADA Grant Program would not meet the criteria of being an "economic development program" or "enterprise" endeavor.



## *Entitlement Funds*

With the City recently becoming a CDBG Entitlement Community, it will begin receiving annual allocations of funding in the late spring/early summer of 2024. Staff discussed with HUD representatives at a recent conference the potential of using entitlement funds towards an ADA Grant Program. The funds could potentially be used in this capacity, but would still need to meet the other requirements and qualifications. So, it could be used to help businesses in identified LMI areas of the community, but likely will not be available to every business in town. Staff would also recommend this be a topic in the process of developing the required plans for the use of the entitlement funds, and not commit the funding now.

## **Potential Grant Examples**

Staff researched Accessibility Grants throughout the Country and found the following:

[Cañon City, CO](#)

[Saint Peter, MN](#)

[San Francisco, CA](#)

[Dubuque, IA](#)

[Frostburg, MD](#)

[San Jose, CA](#)

Many of these programs are limited to downtowns or other boundaries and are not available to all businesses throughout the community. There are a couple, however, that are available to all businesses in the community. Several are in conjunction with a façade improvement program similar to Minot's. Cañon City's program includes funding for life safety code compliance issues, such as electrical, plumbing and fire code compliance.

## **Staff Recommendations**

Based on all the information outlined in this document, City Staff makes the following recommendations:

- 1<sup>st</sup> recommendation: Leave the Façade Improvement Program as currently structured and make no changes to current building codes related to accessibility.

- The current Façade Program already allows for accessibility costs to be reimbursed, including push button/power assisted doors, and meets state law as an economic development program.
  - Current building code already addresses ADA accessibility compliance in accordance with federal law.
- 2<sup>nd</sup> recommendation: Change City Ordinance to be similar to the Mandan ordinance requiring push button/power assisted doors on any project receiving any public funds (Federal, State or Local) but not create an ADA Grant Program
  - This raises the standard but doesn't require the City to pay for the improvements
  - State law prohibits the City "gifting" tax revenues to anything other than helping the poor and economic development enterprises
  - Staff anticipates this will have significant resistance from contractors and business owners.
- 3<sup>rd</sup> recommendation: Same as 2<sup>nd</sup> recommendation but also use Entitlement Funds to create an ADA Grant Program
  - Staff still recommends the City go through the planning and prioritization process with the Entitlement funds to verify this is the highest priority use of the funding.