

**Township of Middletown
County of Monmouth
State of New Jersey**

**AMERICANS WITH DISABILITIES ACT
REVISED TRANSITION PLAN**

Adopted: April 24, 2008
Revised: November 21, 2011

Original Transition Plan Prepared By:

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**Township of Middletown
County of Monmouth**

ADA Compliance Committee

The following individuals provided input and assisted in the review and preparation, or in the implementation of the Township's Revised ADA Transition Plan adopted by the Township Committee of the Township of Middletown on November 21, 2011 at the conclusion of an eleven-month process including the receipt of public comment.

Anthony Mercantante, Administrator
Jim Van Nest, Assistant Administrator
Ted Maloney, P.E., Engineer & Director of Public Works
Cindy Veneziano, ADA Compliance Officer
Brian M. Nelson, Esq., Township Attorney
Robert Keady, P.E., Township Consulting Engineer
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Joseph Kachinsky, Construction Official
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SECTION 1

Overview of the Americans With Disabilities Act (“ADA”) Obligations for Municipal Governments

OBLIGATIONS UNDER ADA GENERALLY

The Americans with Disabilities Act (“ADA”), enacted on July 26, 1990, provides comprehensive civil rights protections to persons with disabilities in the areas of employment, state and local government services, access to public accommodations, transportation, and telecommunications. The ADA is companion civil rights legislation with the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973. This legislation mandates that qualified disabled individuals shall not be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity. The Act also provides disabled employees with certain protections and requires employers to make reasonable accommodation for disabled applicants and employees.

The particular focus of the Township of Middletown’s Transition Plan is to provide accessibility to disabled individuals by addressing and eliminating structural barriers associated with the Township’s public facilities. Access to civic life by people with disabilities is a fundamental goal of the ADA. To ensure that this goal is met, Title II of the ADA requires local governments make their programs and services accessible to persons with disabilities. This requirement extends not only to physical access at government facilities, programs, and

events -- but also to policy changes that governmental entities must make to ensure that all people with disabilities can take part in, and benefit from, the programs and services of local governments. In addition, governmental entities must ensure effective communication -- including the provision of necessary auxiliary aids and services -- so that individuals with disabilities can participate in civic life.

NO GRANDFATHERING, BUT FLEXIBILITY PERMITTED

The ADA does not allow for the “grandfathering” of pre-existing facilities. It does, however, permit flexibility in how and when access is provided as public resources permit. Specifically, in providing access, local governments are not required to take any action that would result in a fundamental alteration to the nature of the service, program, or activity in question, or that would result in undue financial and administrative burdens. This determination can only be made by the head of the public entity or a designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burden would result must be based on all resources available for use in a program. If an action would result in such an alteration or such burdens, a local government must take any other action that it can to ensure that people with disabilities receive the benefits and services of the program or activity. 28 C.F.R. § 35.150(a)(3).

Title II requires city governments to ensure that all of their programs, services, and activities, when viewed in their entirety, are accessible to people

with disabilities. Program access is intended to remove physical barriers to city services, programs, and activities, but it generally does not require that a city government make each facility, or each part of a facility, accessible. For example, each restroom in a facility need not be made accessible as this could be prohibitively costly or physically impossible. Signage, however, directing people with disabilities to alternative accessible features and spaces in a facility should be provided.

In addition to the prior illustration, program accessibility may be achieved in a variety of ways. Local governments may choose to make structural changes to existing facilities to achieve access. But local governments can also pursue alternatives to structural changes to achieve program accessibility. For example, city governments can move public meetings to accessible buildings and can relocate services for individuals with disabilities to accessible levels or parts of buildings. When choosing between possible methods of program accessibility, however, city governments must give priority to the choices that offer services, programs, and activities in the most integrated setting appropriate. All newly constructed local government facilities, however, must be fully accessible to people with disabilities. 28 C.F.R. §§ 35.149, 35.150, 35.151, 35.163.

RULES GOVERNING HISTORIC STRUCTURES

Under ADA regulations, historically significant facilities are defined as those facilities or properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under state or local law. Structural changes to these facilities that would threaten or destroy the historical significance of the property or would fundamentally change the program being offered at the historic facility need not be undertaken. Nevertheless, a local government must consider alternatives to structural changes in these instances -- including using audio-visual materials to depict the inaccessible portions of the facility and other innovative solutions.

If alterations are being made to a historically significant property, however, these changes must be made in conformance with the ADA Standards for Accessible Design, ("the Standards"), 28 C.F.R. Part 36, § 4.1.7, or the Uniform Federal Accessibility Standards, ("UFAS") § 4.1.7, to the maximum extent feasible. If following either set of standards would threaten or destroy the historical significance of the property, alternative standards, which provide a minimal level of access, may be used.

This decision must be made in consultation with the appropriate historic advisory board designated in the Standards or UFAS, and interested persons should be invited to participate in the decision-making process. 28 C.F.R. §§ 35.150(b)(2); 35.151(d); Standards § 4.1.7; UFAS § 4.1.7. If these lesser standards would threaten or destroy historically significant features, then the

programs or services conducted in the facility must be offered in an alternative accessible manner or location.

RULES GOVERNING INSTALLATION OF CURB CUTS

When streets and roads are newly built or altered, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads. While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements. At existing roads and sidewalks that have not been altered, however, local governments may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so. Under program access, alternative routes to buildings that make use of existing curb ramps may be acceptable where people with disabilities must only travel a marginally longer route.

One way to ensure the proper integration of curb ramps throughout a municipality is to set a series of milestones for curb ramp compliance in a municipality's transition plan. Milestones are progress dates for meeting curb ramp compliance throughout the municipality. Milestones should occur on a regular basis throughout the course of the transition plan and must reflect a priority to walkways serving government buildings and facilities, bus stops and other transportation services, places of public accommodation, and business

districts, followed by walkways serving residential areas.

It also may be appropriate for a city government to establish an ongoing procedure for installing curb ramps upon request in both residential and nonresidential areas frequented by individuals with disabilities. 28 C.F.R. §§ 35.150(d)(2); 35.151(e). In setting milestones and in implementing a curb cut transition plan for existing sidewalks, the actual number of curb cuts installed in any given year may be limited by the fundamental alteration and undue burden limitations.

SELF-EVALUATION & TRANSITION PLANNING

One important way to ensure that Title II's requirements are being met in municipalities of all sizes is through self-evaluation, which is required by the ADA regulations. Specifically, all local governments were required to complete a self-evaluation of their facilities, programs, policies, and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. Self-evaluations should consider all of a local government's programs, activities, and services, as well as the policies and practices that a city has put in place to implement its various programs and services. Self-evaluation enables local governments to pinpoint the facilities, programs and services that must be modified or relocated to ensure that local governments are complying with the ADA.

Remedial measures necessary to bring the programs, policies, and services into compliance with Title II should be specified -- including, but not

limited to: (1) relocation of programs to accessible facilities; (2) offering programs in an alternative accessible manner; (3) structural changes to provide program access; (4) policy modifications to ensure nondiscrimination; and (5) auxiliary aids needed to provide effective communication. In the case of the Township of Middletown, which employs more than fifty (50) people, it must also develop a transition plan that identifies those changes and sets a schedule for implementing them. Both the self-evaluation and transition plans must be available to the public. 28 C.F.R. §§ 35.105, 35.150(d).

SECTION 2

History of ADA Litigation & Compliance In Middletown

On January 25, 2004, the Township of Middletown was sued in federal court as part of a private action in the matter of Advocates for Disabled Americans (AFDA), et al. v. Township of Middletown, alleging certain violations of the ADA and Rehabilitation Act arising from alleged barriers to accessibility on municipally owned properties. On February 27, 2006, this matter was settled upon entry of a Consent Order addressing the disputed claims absent adjudication on the merits and without any admission by the Township of Middletown of any violations of the ADA, Rehabilitation Act or other Federal or State Civil Rights laws. In turn, the 2006 Consent Order required the Township of Middletown to adopt a Transition Plan pursuant to 28 C.F.R. § 35.150 within one year of entry of the Consent Order.

On July 31, 2007, however, a more comprehensive Consent Order was entered as a result of continuing mediation and arbitration over fees, which continued the effectiveness of the 2006 Consent Order but modified certain terms including those governing the adoption and implementation of the Township's Transition Plan. Specifically, the 2007 Consent Order required: (1) the issuance of a Request for Proposals ("RFP") on or before September 15, 2007; (2) the submission of qualified bids being received no later than November 15, 2007; (3) an award of contract being made no later than

February 1, 2008; and (4) the completion of a Transition Plan by August 1, 2008. The 2007 Consent Order also called for the appointment of an ADA Compliance Officer by August 15, 2007. The Township of Middletown met all of these deadlines.

First, in August 2007, Cindy Veneziano, the Township's EEO Officer was appointed by the Township Administrator to serve as the Township's ADA Compliance Officer. Ms. Veneziano has worked in the human resources field for more than twenty-two (22) years and between 2005 to present has received extensive training in ADA issues and compliance. Ms. Veneziano's continuing appointment as the Township's ADA Compliance Officer was reconfirmed by Resolution of the governing body in 2010, and she is specifically compensated for these duties under this title pursuant to the Township's 2011 salary ordinance.

Second, a timely RFP was issued pursuant to the Local Public Contracts Law with four (4) responses being received on November 17, 2007. These bids ranged in cost from \$119,250 from the Plaintiff's expert to \$88,300 from Complete Access Solutions LLC. On January 22, 2008, by Resolution No. 08-077, the Township awarded Complete Access Solutions LLC a contract in the amount of \$88,300 for the specific purpose of developing the Township's ADA Transition Plan.

On April 28, 2008, Complete Access Solutions LLC delivered it Transition Plan to the Township. Incorporated into this Revised Transition Plan, it reviewed every known Township facility, identified barriers to access, recommended detailed corrective actions based on applicable standards, and established priority levels and cost estimates for completing the same. Since the adoption of the Township's original Transition Plan, the Township has budgeted and expended more than \$300,000, exclusive of staff time, towards implementation of the Transition Plan's recommended corrective actions, which have been far more costly than estimates provided in the Township's original Transition Plan. Despite continuing dramatic losses in revenue resulting in nearly \$4 million in actual cuts to the Township's municipal budget in 2011, the Township continues to budget \$100,000 annually in its capital budget for ADA improvements. It is important to note that this amount is exclusive of dollars incorporated into the Township's annual road programs utilized for the construction and/or improvement of curb ramps along municipal roadways.

In addition to capital funds being dedicated to ADA improvements at municipal facilities and parks that have taken place and are under way, curb ramps are being installed during all roadway reconstruction and resurfacing projects. From 2008-2011 alone, the Township has completed 167 curb ramps on municipal roadways containing sidewalks or existing curb ramps, a complete road-by-road index of which is attached hereto as Exhibit 43. Curb ramps are also required as part of all applicable new private construction projects in the

Township. Curb ramps have already been constructed at most major Township facilities, or will be at all other Township facilities pursuant to the Facility Prioritization Schedule provided under Section 6.

SECTION 3

Revised Transition Plan Adoption Process

Revisions to the Township of Middletown's Transition Plan were considered through a widely open public process spanning eleven (11) months above and beyond the standards required to be met pursuant to 28 C.F.R. § 35.150(d)(1).

Beginning in January 2011, the Township's ADA Compliance Committee reviewed the Township's progress to date relating to making accessibility improvements pursuant to the Township's 2008 Transition Plan. The Committee determined what areas needed improvement and prioritization, as well as making recommendations to the Township Administration regarding the continued financing of the same. These recommendations were utilized to formulate the initial draft of the Township's Revised ADA Transition Plan.

On May 2, 2011, the draft Revised Transition Plan was work-shopped by the Governing Body for its preliminary consideration and review. On May 3, 2011, the draft Revised Transition Plan was posted on the Township's website for public review and receipt of written comments for a period of thirty (30) calendar days before any public hearing was held. Hard and electronic copies were also made readily available upon request from the Township Clerk's office.

Beginning on May 20, 2011—a month in advance of the public hearing date—the public hearing was advertised via public notice on the Township’s website, the Township’s official bulletin board, and through a paid advertisements in the Township’s official newspaper, with public notice being sent to all other newspapers covering the Township.

On June 20, 2011, interested parties were provided up to ten (10) minutes each to address the governing body with any specific comments on the Revised Transition Plan during a specially dedicated portion of the meeting dedicated to this issue alone.

On November 14, 2011, after review and analysis of the comments received by the Township Administrator, ADA Compliance Officer, Director of Public Works, Township Attorney, and Township Consulting Engineer, a meeting of the Township’s ADA Compliance Committee was convened to review amendments and supplements to the draft Revised Transition Plan. At this time, the ADA Compliance Committee made a few final adjustments to the Facility Prioritization Schedule and recommend that the Revised Transition be considered for final adoption by the governing body at its regular meeting to be held on November 21, 2011.

Upon adoption, the Revised Transition Plan will be made readily available on the Township’s website and by hard or electronic copy in the Township Clerk’s office. Any future reviews or revisions made to the Township’s Transition Plan should be conducted in this same public manner.

SECTION 4

ADA Compliance Officer, Complaint Procedure & Complaint Form

ACCOMODATION AND ACCESSIBILITY REQUESTS

The Township of Middletown is committed to providing equal access to all its programs and services in a manner that integrates individuals with disabilities as much as possible. To the greatest extent possible, the Township will provide meaningful accommodations or access to all of its services, programs, and activities for qualified individuals with disabilities. It is requested that any such requests be made at least forty-eight (48) hours in advance. Individuals requiring any special accommodations that may not be readily available to access Township programs or services should contact the Township's ADA Compliance Officer, Cindy Veneziano, who may be reached as follows:

Cindy Veneziano
ADA Compliance Officer
One Kings Highway
Middletown, NJ 07748
732-615-2000 x2017
cvenezia@middletownnj.org

PROCEDURES FOR MAKING ACCESS COMPLAINTS

Any user of Township facilities or services who wishes to file a complaint regarding an ADA accommodation or the Township's alleged failure to provide such accommodation should use the Township's ADA Complaint Form attached

to this Transition Plan and to be posted on the ADA section of the Township's website, to pursue his or her claim through these procedures. This form shall be filed with the Township's ADA Compliance Officer who shall conduct a preliminary review of the complaint and make a preliminary recommendation to the Township Administrator regarding how the complaint should be addressed. The Administrator shall then determine what, if any, corrective action may be taken within available resources, and by whom. Within forty-five (45) days of filing, the complainant should be provided an explanation regarding what corrective action has or is being taken, or if none, an explanation as to why.

Complaints regarding inaccessible conditions on private property may also be filed with the Township's ADA Compliance Officer to forward to the appropriate building and/or zoning officials for examination. These complaints, however, can typically only be addressed by the Township while such facilities are undergoing construction or renovations prior to the issuance of Certificates of Occupancy, or the release of other bonds or guarantees, that may be held until private facilities are brought into compliance pursuant to their plans filed with the Township.

SECTION 5

Facilities Compliance Plan

The Facilities Compliance Plan forms the backbone of the Township's Revised Transition Plan to ensure compliance. The primary purpose of the Transition Plan is to document facility changes necessary to provide adequate access to Township facilities and programs for disabled individuals. Given current economic conditions and number of Township facilities in need of barrier removal, not all accessibility improvements can be made at one time, as it would be an extraordinary undue burden on the municipality. Accordingly, a prioritization schedule has been established in conformance with 28 C.F.R. § 35.150(d)(2)(iii).

Prioritization determinations for making corrective the actions recommended under the Township's Transition Plan in 2008 are primarily made based on the availability of financing, the volume of public use at a particular facility and the scale of the barrier. Accordingly, Township facilities with the greatest public use will be given priority and generally be addressed first as financing is available for making the corrective actions recommended, or acceptable alternatives thereto implemented, to provide adequate accommodations or access to disabled individuals as soon as practically possible. Aside from curb ramps financed through roadway improvement programs, almost all financing for the Township's current ADA improvements is

made through capital appropriations financed through bonds or notes that are adopted once per year. Since 2009, funding has been appropriated at a rate of \$100,000 per year, with an additional \$50,000 in 2010 through Parks & Recreation principally for parks and playground barrier removal. Due to the elimination of 40 Township jobs in 2010, the elimination of 16 positions in 2011 along with nearly \$4 million being cut out of the 2011 municipal budget, and other budgetary constraints under the new 2% cap levy law, the Township's prioritization schedule must be spread over many years. Many improvements have already been made at these facilities, but complete barrier removal pursuant to the Township's Transition Plan is not anticipated until the dates provided.

As provided in Section 2, from 2008-2011, the Township has completed 167 curb cuts on municipal roadways containing sidewalks or existing curb ramps, a complete road-by-road index of which is attached hereto as Exhibit 43. Curb cuts at all other Township facilities are being addressed pursuant to the Facility Prioritization Schedule in Section 6. Any curb cuts not yet completed that are to be constructed in conjunction with all annual municipal road programs shall be prioritized in areas surrounding public facilities and downtown areas or business districts within the Township, most of which have already been completed.

SECTION 6

Facility Prioritization Schedule

Detailed Facilities Data Provided In Exhibits

| Covered Facility | Schedule | Exhibit |
|-------------------------------------|-----------------|----------------|
| Township Municipal Complex | Complete 2011 | 1 |
| Cultural Arts Center | Complete 2011 | 2 |
| Normandy Park | Complete 2011 | 3 |
| Tindall Park | Complete 2011 | 4 |
| | | |
| Croyden Hall Complex | 2012 | 5 |
| Health Department Building | 2012 | 6 |
| Port Monmouth Train Station/MHIO | 2012 | 7 |
| Bodman Park | 2012 | 8 |
| Roosevelt Park | 2012 | 9 |
| | | |
| Middletown Swim Club (Pending Cap.) | 2013 | 10 |
| Ideal Beach (Pending Grants) | 2013 | 11 |
| Public Works Complex | 2013 | 12 |
| Nut Swamp Park | 2013 | 13 |
| McMahon Park | 2013 | 14 |
| Wilmort Park | 2013 | 15 |
| Poricy Park | 2013 | 16 |
| | | |
| Stevenson Park (Pending SL Project) | 2014 | 17 |
| Bayshore Recreation Center | 2014 | 18 |
| Fairview Soccer/Applebrook Park | 2014 | 19 |
| Kunkel/Leonardo Park | 2014 | 20 |
| West Front Street Park | 2014 | 21 |
| MTT Park | 2014 | 22 |
| Navesink Tennis Courts | 2014 | 23 |
| | | |
| Belford Park | 2015 | 24 |
| Ripper Collins Park | 2015 | 25 |
| Shorecrest Park | 2015 | 26 |
| Schulz Park | 2015 | 27 |
| Lincroft Acres Park | 2015 | 28 |
| Hillside Park | 2016 | 29 |

| | | |
|---|------|----|
| Lincroft Village Green | 2016 | 30 |
| Greg Butler Park | 2016 | 31 |
| Gordon Court Park | 2016 | 32 |
| Fairway's Park | 2016 | 33 |
| Evergreen Park | 2016 | 34 |
| Leonardo Beach | 2017 | 35 |
| | | |
| Dorsett Park | 2017 | 36 |
| Countryside Park | 2017 | 37 |
| Church Street Park | 2017 | 38 |
| Chanceville Park | 2017 | 39 |
| Fireman's Pond | 2017 | 40 |
| Crystal Pond | 2017 | 41 |
| Bicentennial Park | 2017 | 42 |
| | | |
| Municipal Roadway Curb Ramp Schedule of Completed Roadways 2008-2011 Capital Road Projects | | 43 |

Facilities Not Currently Scheduled for Barrier Removal By Township:

| | |
|-----------------------------------|---------------------------------|
| Bus Shelters | New Jersey Transit Owned |
| Port Monmouth Library | Will Consult Library Board |
| New Monmouth Library | Will Consult Library Board |
| Lincroft Library | Will Consult Library Board |
| Little Red School House | No Recommended Changes |
| Greeley Park | No Recommended Changes |
| Police Firing Range | No Recommended Changes |
| Waloo Park | No Recommended Changes |
| Fire Academy | No Recommended Changes |
| Hillside Recreation Center | No Ownership/In Tax Foreclosure |
| Camp Hope | Closed Indefinitely |
| Middletown Historic Train Station | Closed Indefinitely |
| Skateboard Park | Closed Indefinitely |
| Grove House | Closed Indefinitely |

SECTION 7

Maintenance of Accessible Features

ADA regulations require that once accessible features are installed that they must be properly maintained for continued use by persons with disabilities. 28 C.F.R. § 35.133(a). This includes not only being in proper working order, but also unobstructed by obstacles that would make such facilities or features inaccessible or unusable by individuals with disabilities. These regulations, however, do not prohibit temporary obstructions or isolated instances of mechanical failure due to maintenance or repairs needing to take place. No facilities or feature though should be out of service beyond a reasonable period of time.

To ensure that accessibility facilities or features remain in proper working order, any incidents of malfunctions, failures or repairs being needed should be immediately reported to the Township's ADA Compliance Officer who shall inform the Department of Public Works of the need for maintenance or repairs. The Department of Public Works should inspect the reported issue and advise the ADA Compliance Officer when such maintenance or repairs shall take place. If additional time will be required as it is a matter that must be handled by an outside contractor, or of the scale where additional funding sources may be required, this shall also be reported to the ADA Compliance Officer so other reasonable accommodations may be made while the facility or feature is out of

service.

Finally, an annual inspection of Township facilities and accessibility features should be made to ensure proper maintenance and repair even in instances where issues may not have been reported. Items in need of maintenance or repair from the annual inspection should be placed on a punch list with anticipated dates of repair being provided to the ADA Compliance Officer. Annual ADA inspections should include, but not necessarily be limited to, an examination of the following:

1. Inspection of exterior pathways and curb cuts at Township-owned facilities for any surface irregularities that may create accessibility issues due to wear or cracking.
2. Inspection of disabled parking spaces to ensure that appropriately visible signage and markings remain along with the maintenance of access aisles being clear of obstructions and usable.
3. Inspection of all building signage to ensure it remains appropriately visible to direct persons with disabilities to the designated accessible paths of travel.
4. Inspection of door pressures to maintain them as low as possible.
5. Inspection of elevators and chair lifts to ensure property maintenance and working order.
6. Inspection of interior hallways and passage ways to ensure the no objects mounted on the walls protrude more than 4 inches into paths of travel.
7. Inspection of all audible and visual fire alarms and pull stations to be fully operational and in conformance with applicable Fire Code.
8. Inspection of all accessible plumbing fixtures, including toilets, urinals, lavatories, sinks, faucets, showers and drinking fountains to be operational and in compliance with accessibility codes.