Administrative Policy

Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 – No. 026

Effective Date: 01-01-02
Revision Date: 08-12-13

I. Scope	This policy applies to all city employees, appointed officials, applicants, contractors, vendors, and the general public.
II. Purpose	To establish guidelines regarding discrimination on the basis of disability in employment and in regard to participation in City programs and activities in accordance with the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 and other applicable federal and state laws and regulations.

III. Guidelines

A. Provisions

1. The City provides individuals with disabilities access to its facilities and services. The City prohibits discrimination against qualified individuals with disabilities in employment and in regard to participation in City programs and activities.

2. The City will provide ongoing programs of disability-related education and training for all employees in order to enhance their sensitivity to and communication with individuals with disabilities.

3. The City will provide reasonable accommodations to qualified individuals with disabilities in an integrated setting and in an effective, timely, and efficient manner.

B. Definition of Terms

1. **Auxiliary Aids and services** - shall include qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; computer-aided real-time transcription services (CART); written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.

2. **Direct threat -** a significant risk of substantial harm to the health or safety of others that cannot be reduced below that level by the modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

   In determining whether a direct threat exists, the City will consider:

   a. The nature, duration, and severity of the risk;
   b. The probability that the potential injury will actually occur; and,
   c. Whether reasonable modifications of policies, practices, or procedures or other measures will mitigate or eliminate the risk.

3. **Effective Communication -** will mean communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity.

4. **Essential function -** the fundamental job duties of the employee's position. Generally, a job function will be considered essential if the reason the position exists is to perform that function.

5. **Individual with a Disability –** any person who:

   a. Has a physical or mental impairment that substantially limits one or more major life activities;
   b. Has a record of such impairment; or
   c. Is regarded as having such an impairment, whether they have the impairment or not.

6. **Major Life Activity –** activities including, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, sleeping, eating, lifting, speaking, breathing, learning, thinking, reading, communicating, and working. Major life activity also includes the operation of a major bodily function, such as digestive, respiratory, neurological, and circulatory functions.

7. **Impairment –** includes both physiological disorders or conditions and mental or psychological disorders, such as conditions affecting vision, speech, and hearing; emotional or mental illness; seizure disorders; intellectual disability; orthopedic conditions; neuromotor disorders; learning disabilities; diabetes; heart disease; nervous conditions; cancer; asthma; HIV infection; and drug addiction if the addict has successfully completed or is participating in a rehabilitation program and no longer uses illegal drugs.

   The following conditions are not physical or mental impairments: transvestism; transsexualism; illegal drug use; homosexuality or bisexuality; compulsive gambling; kleptomania; pyromania, pedophilia; exhibitionism, voyeurism; pregnancy; height and weight (without a physiological cause); eye color; hair color; left-handedness; poverty; lack of education; a prison record; and poor judgment or quick temper.

8. **Qualified Individual with a Disability** – an individual with a disability who satisfies the requisite work experience, education and other job related requirements of the employment position the individual holds or desires, and who is able to perform the essential functions of the position, with or without reasonable accommodation.

   In regard to a City program or activity, a qualified individual with a disability is an individual with a disability who meets the eligibility requirements of the program or activity.

9. **Reasonable Accommodation** - a change in the work environment - including how the work is performed – a structural alteration, a change in policy, procedure or practice, or the provision of auxiliary aids and services that assists a qualified individual with a disability with the limitations related to the disability.

   An accommodation is not reasonable if it;

   a. Eliminates an essential function of the job;
   b. Results in fundamental alteration in the service, program, or activity.
   c. Imposes an undue financial or administrative; or
   d. Results in a direct threat to the health or safety of the individual or others.

10. **Undue Burden** – a significant difficulty or expense in providing an accommodation. Undue burden may include, financial cost, hardships on other employees, violation of a collective bargaining agreement or a fundamental alteration to the operation of the business of the City. In determining whether an action would result in an undue burden, the City considers the following factors:

    a. Nature and cost of accommodations.
    b. Overall financial resources.
    c. Number of employees.
    d. Effect on expenses and resources.
    e. Impact upon operation.
    f. Number, type, and location of facilities.

C. Employment Opportunities

The City prohibits discrimination against individuals with disabilities in all aspects of employment, including, but not limited to, application procedures, hiring, promotion, discipline, termination, training, compensation and benefits. The City will provide reasonable accommodations to qualified individuals with disabilities where limitations related to their disability affect the performance of their job.

Applicants with disabilities may request an accommodation relating to the hiring process. Such requests should be made to the Human Resources Department.

An employee or applicant who believes they have been discriminated against on the basis of a disability may file a complaint with Director of Human Resources or designee.

D. Programs and Activities

The City prohibits discrimination against qualified individuals with disabilities in regard to participation in any City program or activity. The City will provide reasonable accommodation to such individuals to enable them to access and receive all benefits from a program or activity.

E. Structural Alterations, Renovations, and New Construction

The City will ensure that its facilities are readily accessible and usable by individuals with disabilities under the applicable ADA accessibility standards for design, construction, and alteration.

F. Procedures for Requesting an Accommodation

EMPLOYEES

1. Employee Accommodation Requests

   a. If an employee feels their impairment requires accommodation in the workplace, the employee should make a request to their immediate supervisor or the ADA Coordinator.

   b. The City may require additional information regarding the impairment and limitations and the need for an accommodation.

   c. The employee's supervisor and ADA Coordinator will review the request for accommodation and any supporting documentation and meet with the employee to discuss the request and, if appropriate, possible accommodations. The employee will receive a written determination within 15 days of the meeting.

   d. An employee may submit a request for reconsideration of a denial of an accommodation to the ADA Coordinator.

      The request must be:

      1. In writing;
      2. Submitted within 10 working days from the date of denial; and
      3. Include all supporting documentation.

GENERAL PUBLIC

1. Public Accommodation Requests

   a. Requests for accommodations based on disability must be made in writing directly to the Department offering the program, activity, or service, or to the ADA Coordinator.
   b. Requests must be made no later than three business days prior to the event to ensure availability of the accommodation.

c. If the Department deems the request would result in an undue burden, the Department will notify the requesting party and the ADA Coordinator prior to the event.
d. For Deaf or Hard of hearing individuals, City of Henderson employees will inquire as to the choice of auxiliary aid or service the individual and honor the expressed choice unless the employee can demonstrate that another equally effective means of communication is available. In non-exigent circumstances, employees shall use the American Sign Language pictogram for "sign language interpreter" as demonstrated in Exhibit 1 to inquire as to their preference. If a sign language interpreter is requested, a qualified sign language interpreter shall be provided at the City's expense at the earliest reasonable time. During normal business hours, generally an interpreter shall be provided within one hour of the first identification of need.

2. Grievance Procedure

a. This grievance procedure is established pursuant to Title II of the ADA for any individual with a disability who feels they were discriminated against in regard to admission, access, benefit, or operation of any City program, activity or service.
b. Requests should be made in writing and submitted to the ADA Coordinator within 60 days from the date of the alleged discrimination. The complaint should provide a detailed description of the alleged discrimination and include any supporting documentation.
c. Within 15 calendar days of receipt of the complaint, the ADA Coordinator or designee will meet with the complainant to discuss the complaint and possible resolution.
d. Within 15 calendar days after the meeting, the ADA Coordinator or designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.
e. If the final resolution does not satisfactorily resolve the issue, the complainant or designee may appeal the decision within 15 calendar days after receipt of the response to the Director of Human Resources or designee.
f. All written complaints received by the ADA Coordinator or designee, appeals and responses will be retained by the City of Henderson for a least three (3) years.

G. Retaliation

The City prohibits retaliation against individuals who in good faith request an accommodation or reports or files a complaint alleging possible discrimination based on a disability under the ADA, the Rehabilitation Act, and other applicable federal and state laws. The City will not retaliate against, coerce, intimidate, threaten, harass, or interfere with any individual for exercising or enjoying their rights under these laws or for aiding or encouraging any other individual in their exercise or enjoyment of such rights.

Exhibit 1:

ISSUED

_____
Fred Horvath
Director of Human Resources

Date: _____

APPROVED:

_____
Jacob L. Snow
City Manager

Date: _____