

## **Appendix B**

### **Process & Procedures for Addressing American With Disabilities Act Complaints**

#### **Introduction**

American With Disabilities Act (ADA) discrimination complaint process is intended to provide aggrieved persons using fixed route and paratransit services provided by ART (Asheville Redefines Transit), Apple Country Public Transit (ACPT), or Mountain Mobility an avenue to raise complaints of discrimination regarding transit related programs, activities and services as required by statute.

#### **Purpose**

The purpose of the discrimination complaint procedures is to describe the process used by the City of Asheville transit services and our contractors and sub-recipients. These procedures cover all complaints filed under the Americans with Disabilities Act of 1990. Any person who feels that he or she has been subjected to discrimination on the basis of disability has the right to file a complaint (see ADA Complaint Form Attachment A) with the City of Asheville Legal Department or Henderson County Legal Department. Under no circumstance will a complainant be discouraged from filing a complaint.

ADA complaints must be filed within 180 calendar days of the alleged discriminatory event or practice. Complaint shall be in writing and signed by the complainant(s). They should be directed to:

City of Asheville  
Legal Department  
Attn. City Attorney  
70 Court Plaza  
Asheville, NC 28801

Henderson County  
Legal Department  
Attn: County Attorney  
1 Historic Courthouse Square, Suite #5  
Hendersonville, NC 28792

These procedures do not deny or limit the right of a complainant to file a formal complaint with an outside enforcement agency. Complainants have the right to complain at any point in the process and/or directly to the Federal Transit Administration, Office of Civil Rights Region IV, 230 Peachtree, NW, Suite 800, Atlanta, GA 30303, telephone (404) 865-5600. Every effort will be made to obtain early resolution of complaints.

#### **Roles and Responsibilities**

- The Transportation Planning Manager has overall responsibility for the discrimination complaint process and procedures.
- The City of Asheville Legal Department, City Attorney and Henderson County Legal Department, County Attorney serves as the point of contact for the public to initiate complaints of discrimination.

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- The Transportation Department Director is responsible for ensuring an impartial and objective investigation, collect factual information and prepare a fact-finding report based upon the information obtained from the investigation.

### **Filing of Formal Complaints**

#### **Applicability**

The complaint procedures apply to the beneficiaries of fixed route and paratransit programs, activities, and services provided by ART (Asheville Redefines Transit), Apple Country Public Transit (ACPT) or Mountain Mobility.

The option of informal meeting(s) between the affected parties and Transportation Planning Manager may be utilized for resolutions at any point in the process.

#### **Eligibility**

Any person using fixed route and paratransit services provided by ART (Asheville Redefines Transit), Apple Country Transit (ACT) or Mountain Mobility who believes that he/she has been excluded from participation in, or has been denied benefits or services of any program or activity administered by COA transit or its sub-recipients, consultants, and contractors on the basis of disability may bring forth a complaint of discrimination the Americans with Disabilities Act.

#### **Time Limitations and Filing Options**

ADA complaints of discrimination may be filed with:

- City of Asheville
- Henderson County
- Federal Transit Administration
- U.S. Department of Transportation

In all situations, the City of Asheville staff must immediately forward discrimination complaints to FTA.

Complaints must be filed no later than 180 days after:

- The date of the alleged act of discrimination; or
- The date when the person(s) became aware of the alleged discrimination; or
- Where there has been a continuing course of conduct, the date on which the conduct was discontinued.

#### **Type of Complaints**

All ADA complaints are considered formal as there is no informal process. An ADA Complaint Form (Attachment A) is available for complainants.

In cases where Complainant is unable or incapable of providing a written statement, a verbal complaint may be made. The Transportation Planning Manager will interview the Complainant and assist the person in converting verbal complaints to writing.

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All complaints must, however, be signed by the Complainant or his/her representative.

Complaints must include written detailed description of the issues, including names and job titles of those individuals perceived as parties in the complaint.

### **Complaint Basis**

Allegations must be based on issues involving disability. This includes physical or mental impairment, permanent or temporary, or perceived (examples -blind, deaf, mobility limitations, etc.).

### **Complaint Processing**

#### **Initial Contact**

The Legal Department receives a complaint and refers it to the Transportation Program Manager for review within 10 calendar days. As resources, COA Transportation Department, COA Legal Department, and ART staff provides complainants with:

- An explanation of their filing options.
- The discrimination complaint process.

#### **The Complaint Review Process**

- a. The Transportation Planning Manager reviews the complaint upon receipt to ensure that relevant information is provided, the complaint is timely, and meets jurisdiction.
- b. The Transportation Planning Manager or her/his designee will contact the complainant in writing, within 72 hours of receiving the complaint from the Legal Department, requesting additional information on the matter if needed.
- c. The complaint shall be investigated unless:
  - a. The complaint does not involve discrimination, or are not based on an ADA protection
  - b. The complaint is withdrawn.
  - c. The complainant fails to provide required information after numerous requests.
  - d. The complaint is not filed timely.
- d. The Transportation Department Director and COA Legal Department will make a determination on the disposition of the complaint.
- e. Once an investigation is triggered the Legal Department will notify the complainant, in writing, of the case number assigned and provided the complainant details of his/her rights under ADA.

### **Investigation**

#### **Investigation Plan**

The Transportation Planning Manager shall prepare a written plan, which includes, but is not limited to the following:

- Names of the complainant(s) and respondent(s);
- Basis for the complaint;

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- Issues, events or circumstances that caused the person to believe that he/she has been discriminated against;
- Information needed to address the issue;
- Criteria, sources necessary to obtain the information;
- Identification of key people;
- Estimated Investigation time line;
- Remedy sought by complainant(s)

### **Conducting the Investigation**

- a. The investigation will address only those issues relevant to the allegations in the complaint.
- b. Confidentiality will be maintained as much as possible.
- c. Interviews will be conducted to obtain facts and evidence regarding the allegations in the complaint. The investigator will ask questions to elicit information about aspects of the case, which the witness can provide firsthand information.
- d. Interviews can be tape recorded with the interviewees consent.
- e. A chronological contact sheet is maintained in the case file throughout the investigation.

### **Investigation Reporting Process**

- a. Within 90 days of receiving the complaint, the investigator prepares an investigation report and submits the report and supporting documentation to the Transportation Department Director for review.
- b. The investigative report and its findings will be reviewed by the Transportation Department Director and in some cases the investigative report and findings will be reviewed by the COA Legal Department. The report will be modified as needed.
- c. The Transportation Department Director & COA Legal Department will make a determination on the disposition of the complaint.
- d. In the event of noncompliance with ADA regulations remedial actions will be listed.
- e. Notice of Director's determination will be mailed to the Complainant. Notice shall include information regarding appeal rights of Complainant and instructions for initiating such an appeal.

### **Appeal**

The COA Transportation Legal Department, Transportation Planning Management Division will reconsider this determination if new facts, come to light.

Complainant may submit their complaints to FTA for investigation at any point in the process. Including when/if is dissatisfied with the determination and/or resolution set forth by the City of Asheville. The same complaint may be submitted to the FTA for investigation. Complainant will be advised to contact the Federal Transit Administration, Office of Civil Rights Region IV, 230 Peachtree, NW, Suite 800, Atlanta, GA 30303, telephone (404) 865-5600.

### **Reporting Requirements**

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A copy of the complaint and the COA's investigation report/letter of finding and Final Remedial Action Plan will be issued to FTA within 120 days of the receipt of the complaint.

### **Records**

The Transportation Planning Manager will ensure that all records relating to ADA Complaint Process are maintained with department records. Records will be available for compliance review audits.

### **Authorities**

#### **Americans With Disabilities Act of 1990, (Pub. L. No. 101-336):**

The Americans With Disabilities Act of 1990 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a state or a local government.

#### **Section 504 of the Rehabilitation Act of 1973:**

Section 504 of the Rehabilitation Act of 1973 provides that no qualified handicapped person, shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.