

Town of Peru, Massachusetts



Americans With Disabilities Act

Self-Evaluation and Transition Plan



Prepared by:



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Table of Contents

Introduction	3
Background on the ADA	5
Title I – Employment	6
Title II – State and Local Government	6
Methods of Providing Program Access	8
Effective Communication & Website Access	8
ADA Self Evaluation	10
 Peru ADA Transition Plan – (Pull Out Section)	
Town Hall Transition Plan	Transition Plan 1-15
Highway Department Transition Plan	Transition Plan 16-22
Volunteer Fire Department Transition Plan	Transition Plan 23-25
Ballfield, Playground & Cemeteries Transition Plan	Transition Plan 26-29
 Appendix A – Peru Department, Board and Committees Programs & Services List and ADA Survey	17
Appendix B – ADA Compliance Resources	23

Introduction

The small Town of Peru, Massachusetts, encompassing 26.1 square miles, is located in central Berkshire County, along its eastern border. Peru's current population is approximately 823 (per Town Clerk data.) According to the U.S. Census Bureau, 2010-2014 American Communities Survey, approximately 128 (roughly 12%) of Peru's residents have a disability. Of the approximately 633 residents in the 18-64 age group, 77 residents (12%) have at least one disability, 14 residents (2.2 %) have a hearing difficulty, 20 residents (3.2 %) have a vision difficulty, 43 residents (6.8 %) have an ambulatory difficulty, 25 residents (3.9 %) have a self-care difficulty, and 46 residents (7.3 %) have difficulty living independently. In addition, 45 of the estimated 83 residents over the age of 65 (54%), also have a disability. Older adults over age 65, are typically the most active voter, program participant and volunteer in small, rural communities like Peru, making accessibility critical for this age group.

Through a planning grant received through the Massachusetts Office on Disability, the Town of Peru worked with Berkshire Regional Planning Commission (BRPC) to prepare this Americans With Disabilities Act Self-Evaluation & Transition Plan.

The Americans with Disabilities Act (ADA) is a Federal civil rights law that provides protections to those living with disabilities. The ADA ensures that those with a disability cannot be excluded from participating in, or denied the benefits of access to buildings, community facilities, programs, services and activities offered by state and local governments. These protections also cover current and future employees of the Town of Peru, as the ADA law prohibits employers from firing, refusing to hire or rehire, or otherwise discriminating, against a "qualified" person with a disability, on the basis of that disability and obligates employers to provide "reasonable accommodations" to allow them to fulfill the duties of their jobs.

As required by the guidelines provided through the Massachusetts Office on Disability and the New England ADA Center, Peru's ADA Self-Evaluation & Transition Plan includes an evaluation of Town-owned properties and buildings (Town Hall/Community Center, Highway Department and Transfer Station, Fire Department, and three Town Cemeteries) and outdoor public spaces (Playground, Pavilion and Ballfield) with barrier-removal recommendations for each. The assessment of physical barriers and recommendations for their removal, are based on the current 2010 ADA Standards for Accessible Design (2010 ADA Standards.)

This Transition Plan also includes recommendations for policies and procedures for adoption by the Town of Peru's municipal departments, including a resource list for

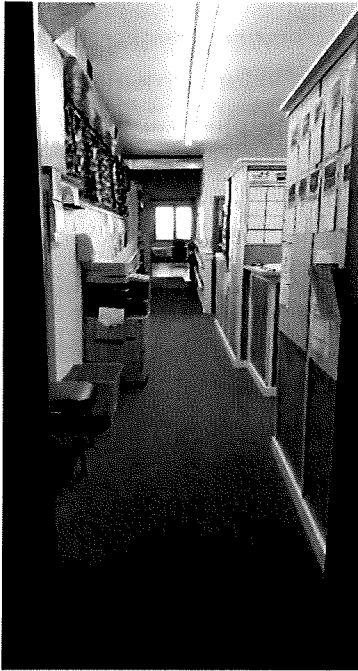
ongoing training and supports, to help increase access to town services and programs for persons living with disabilities.

Like many communities in Massachusetts, Peru contains aging infrastructure, that has been updated as needs have changed and budget funding has allowed, over the course of many years. Peru's distinction as having the Town center at the highest elevation in the state, makes it especially susceptible to the effects of harsh weather. In addition to steep and hilly terrain, the soils in Peru are mostly clays, with a high water table and slow percolation rates creating wet conditions for many months of the year. Pavement management and parking lot maintenance for this small community is a constant and costly challenge.

The most immediately-apparent ADA accessibility issue, upon approach to all Town properties, is the general absence of street improvements to increase accessibility, such as curb cuts or paved and delineated access routes. The pavement in the parking areas surrounding each building and the play areas, is in very poor condition. Uneven surfaces, characterized by loose gravel, potholes and ruts, creates unsafe conditions for all users. Filling, regrading and re-paving all outdoor parking lots and access routes at Town Hall, the Highway Department and Transfer Station and the Volunteer Fire Department and adjacent playgrounds, should be a priority for the Town of Peru, to achieve greater ADA compliance.

ADA Accessible parking signs are present at both Town Hall and the Transfer Station (and recently removed from outside the Fire House after being hit by a vehicle.) However, the lack of intact paved surfaces makes it currently impossible to delineate the location and extent of accessible parking spaces, access aisles and safe routes into each building or facility.

The good news is that the Town of Peru is making strides toward providing more services for residents with greater accessibility, having erected a new Volunteer Fire Station in 2013 and installed a new playground, pavilion and baseball backstop within the last few years.



The Town Hall has an extra- wide center aisle on its main level, public bulletin boards mounted at an accessible height and three compliant restrooms in service. This Spring, a new emergency exit door and hardware were installed in the main floor Conference Room, with more improvements to follow. In addition, the Highway Department Transfer Station lot is scheduled to be repaved, since the Article was approved at the Town Meeting held on May 18, 2019.

The Town Hall and Community Center at 3 East Main Road (Rte.143) is clearly the hub of activity in Peru. It is the location of all Town Administrative offices, contains public meeting spaces on two floors and is the site for the Annual Town Meeting and all Elections. Designed originally as an elementary school in the 1950's, the building was converted to use as a Town Hall during the late 1980's and renovated for ADA compliance after the Law was enacted in 1991 and

subsequently, as funding allowed.

The Town of Peru Board of Selectmen's stated goal is to seek funding to renovate office and meeting spaces in the building, to make better use of the space and allow for greater public access to Town services, especially for those living with disabilities. A renovation of the size anticipated would require that the work identified in the Transition Plan to remove the identified barriers be undertaken as part of that planned renovation, per ADA and Massachusetts state law.

For a small community like Peru, with a very tight budget, completing this ADA Self-Evaluation & Transition Plan is an important and necessary first step toward greater ADA Compliance.

The ADA Transition plan section is formatted as a pull-out spreadsheet. Title II of the Americans With Disabilities Act only requires the listing of physical obstacles, the methods to be used to make the facilities accessible, the schedule for the barrier's removal and the identification of the responsible Town official. Space is provided in the Transition Plan spreadsheet to add cost estimates for each identified barrier and a list of potential sources of funding. The ADA Transition Plan is meant to be both a guidance document, usable by all Town Departments in planning, budgeting and grant writing, as well as an easy-to-update checklist towards fuller compliance, over time.

Background on the Americans With Disabilities Act

The ADA is a Federal civil rights law first enacted in 1991 and amended several times subsequently. Under the ADA, civil rights are guaranteed to all individuals, including any who experience discrimination because they 1) have a physical or mental impairment that substantially limits a major life activity, 2) have a record of such an impairment, and 3) are regarded as having such an impairment.

Interpretation of the law and its enforcement was intended to be carried out on a case by case basis, through the nation's legal system. Specific complaints of individuals may be filed with different federal agencies, including the Equal Employment Opportunity Commission (Title I), the United States Department of Justice (Titles II and III), the United States Department of Transportation (Titles II and III), and the Federal Communications Commission (Title IV).

The two sections of the ADA that are pertinent to this report are Title I, *Employment* and Title II, *State and Local Government*.

In addition, the Commonwealth of Massachusetts has established a separate standard - 521 CMR: *The Rules and Regulations of the Massachusetts Architectural Access Board* (and as amended) – that is also required of local governments. These state regulations are designed to make public buildings and facilities accessible to, functional for, and safe for use by persons with disabilities. (521 CMR 2.1). The 521 CMR regulations are incorporated by reference as a special code in the Massachusetts State Building Code.

Title I: Employment

42 U.S.C. § 12111, et seq.

The law prohibits employers from firing, refusing to hire or rehire, or otherwise discriminating, against a “qualified” person with a disability on the basis of disability and obligates employers to provide “reasonable accommodations”. To be “qualified,” a person must be able to perform the essential functions of the job, either with or without a reasonable accommodation. Employers are not required to provide an accommodation that would eliminate an essential function of an employee’s job or would pose an “undue hardship” for the employer. An accommodation is provided at the employer’s expense, unless the employer can demonstrate that it would pose an undue financial hardship. The law applies to employers with 15 or more employees.

Title IIA State and Local Government

42 U.S.C. §12131, et seq.

State, local and municipal governments must provide equal opportunity for persons with disabilities in all programs, activities, services and employment practices. People using service animals must be allowed equal access. Effective communication must be ensured with persons who are deaf, hard of hearing and blind or who have cognitive disabilities through provision of auxiliary aids and services. Under a concept called "programmable access," every part of every facility need not necessarily be accessible. Instead, the programs, activities and services when viewed in their entirety must be readily accessible to and useable by persons with disabilities. Individuals may also file private lawsuits.

The process for complying with the Americans with Disabilities Act is as follows;

1. Learning about the requirements of the ADA and how it applies to a facility or program;
2. Conducting a survey to identify barriers;
3. Establishing a list of potential physical modifications for barrier removal, as well as changes to municipal policies to increase access to services.
4. Establishing a timeframe for barrier removal and identifying the person or department responsible for doing so.

The ADA prohibits discrimination on the basis of disability in all services, programs, and activities provided by government entities. Thus, people with disabilities must have an equal opportunity to participate in and benefit from a town's services, programs and activities. To accomplish this, the ADA sets requirements for town facilities, new construction and alterations, communication with the public and policies and procedures governing town programs, services, and activities. The layout of a public building should allow people with disabilities to obtain goods and services and to participate in activities without assistance.

All municipalities of any size must perform a Self-Evaluation of their policies, practices, programs, procedures and services, including communications, to determine compliance under the ADA. Towns must make reasonable modifications to these policies, programs, services, etc., to avoid discrimination against individuals with disabilities, unless such modification would result in a fundamental alteration in the nature of that program or service.

Although the ADA only requires local governments with 50 or more employees to take additional, specific measures, it is strongly recommended that even smaller towns like Peru, with less than 50 employees, follow the same process to insure overall compliance with the ADA. These additional measures include 1) the designation of an

individual to coordinate ADA compliance, 2) the development of a Transition Plan, and the development of an ADA Grievance Procedure.

The 2008 Amendments to the ADA broadened the definition of "disability", thereby extending the ADA's protections to a greater number of people. The 2008 Amendments provided examples which limit "major life activities" including, but not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working" as well as the operation of several specified major bodily functions. The Amendments also stated that when determining whether one qualifies as disabled, one cannot take into account the mitigating effects of assistive devices, auxiliary aids, accommodations, medical therapies, and supplies.

In order to be protected under the ADA, an individual with a disability must also be qualified to perform the essential functions of a job with or without a reasonable accommodation.

In 2010, the Department of Justice revised regulations for Titles II and III of the ADA of 1990. These revised regulations adopted enforceable accessibility standards called the 2010 ADA Standards for Accessible Design. On and after March 15, 2012, compliance with the 2010 Standards was required for all new construction and alterations under Titles II and III. March 15, 2012, is also the compliance date for using the 2010 Standards for program accessibility and barrier removal.

The 1990 ADA Standards for Accessible Design could be used for new construction and alterations under Title II until March 14, 2012. These dates are pertinent to Peru, depending on when town buildings or other facilities were built or rehabilitated.

Methods of Providing Program Access

When a service, program, or activity is located in a building or facility that is not accessible, Title II of the ADA allows a "small" local government to achieve program accessibility in several ways. This can include:

1. Relocating the program, service, or activity to an accessible facility; or
2. Providing the program, service, or activity in another manner that meets ADA requirements; or
3. Undertaking modifications to the building or facility itself to provide accessibility.

Thus, to achieve program accessibility, a small town need not make every existing facility accessible. It can relocate some programs to accessible buildings or facilities and modify others, avoiding expensive physical modifications to all town facilities.

The Department of Justice does not interpret the ADA to require that all slopes, uneven terrain or physical obstacles be removed in outdoor spaces like a cemetery, in order to meet requirements for program access. Program access in the case of a cemetery, might mean providing transportation to or near a gravesite in a vehicle operated either by a family member, funeral director or by cemetery staff, but would not require that the cemetery landscape be leveled to permit a wheelchair user to get to a gravesite. (Source: Dept. of Justice website Q&A)

Effective Communication and Website Access

Local governments must ensure effective communication with individuals with disabilities. Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, municipal governments must provide appropriate auxiliary aids.

Though the type of "auxiliary aids" will vary by person, they may include such services or devices as sign language interpreters, assistive listening headsets, telecommunications devices for deaf persons (TDDs), videotext displays, readers, Brailled materials, computer disks, audio recordings, and large print materials. In addition, telephone emergency services, including 911 services, must provide direct access for individuals with speech or hearing impairments.

Municipal governments are not required to provide auxiliary aids or take any actions that would result in a fundamental alteration in the nature of a service, program, or activity, or that will result in undue financial and administrative burdens. However, alternative auxiliary aids that do not result in a fundamental alteration or undue burden must be provided. For example, day-to-day interaction with hard of hearing individuals may be through written notes or text by phone or email. However, public meetings, interrogations by local police officers, or similar technical interactions will most likely require interpreters or assistive listening systems. It is **required** that alternative auxiliary aids be available that do not result in financial or administrative burdens, yet meet the needs of the disabled.

ADA SELF-EVALUATION

During the months of April through June, 2019, Berkshire Regional Planning Commission (BRPC) worked with the Town of Peru to complete a Self-evaluation that considered all of the municipality's programs, activities, and services, as well as the policies and practices that it has put in place to implement its various programs and services.

An initial meeting was held with Peru's ADA Coordinator to review the project scope. The following week, BRPC appeared at a meeting of the Peru Board of Selectmen which included the participation of Department Heads from the Fire, Highway and Police Departments, to review the project requirements and to ask for their participation. Site Evaluation dates were established subsequently, at each department's convenience.

A survey was sent by email to all of Peru's municipal departments, boards and commissions that offer services, programs or activities to the public. (See Survey, Appendix A). Information from each survey response, along with information gathered from one-on-one interviews with selected departments and by telephone interviews with others, was used to complete the Self-Evaluation of programs, activities and services.

Only four departments in the Town of Peru completed the municipal services, programs and activities Survey. Follow up phone calls to some departments to review answers elicited some clarifying information. The four departments that did respond found the Survey language confusing or indicated that the questions were "not applicable" to their work.

The survey responses indicate a general lack of knowledge around the Americans With Disabilities Act requirements for local government officials.

There was acknowledgment among respondents that currently Peru's departments do not state specifically on the Town website, program literature or announcement flyers that their Programs, Services and Activities do not discriminate on the basis of disability, nor do they mention the availability of auxiliary aids.

No department receives Federal funds, though some collect permit or application fees (e.g. Board of Health.)

Program Accessibility – No department regularly advertises physical or programmatic accessibility to events and services. No department has assistive listening devices, TTY or onsite telecommunication devices for the deaf. Though

departments DO have the ability to print materials in large Typeface, none of them do so regularly.

Non-Structural Program Modifications - There is currently no specific outreach to disabled members of the community, nor do people with disabilities provide advice to any department on programs or activities that the Town provides. There is no provision for auxiliary aids, such as TDD, audio tapes, sign language interpreters to make programs available to people with communications impairments. No department has materials for communicating with people with learning or developmental disabilities.

Remedial measures necessary to bring the programs, policies, and services into compliance with Title II are detailed below - 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

Following is a list of Title II requirements, with the current status of each in Peru, noted in bold type, in parentheses. Additional information and recommendations appear in subsequent paragraphs:

1. Designate a responsible employee as ADA Coordinator (**Completed, 2018.**)
2. Adopt, post and distribute a Public Notice on the municipality's ADA policies and procedures. (**Completed, 2018**)
3. Adopt, distribute and/or post an ADA Grievance Procedure (See ADA Title II- 35 CFR Part 35.107 (b)). (**Completed, 2018**)
4. Modify, maintain, and update Municipal Policies, Procedures, and Practices, including job descriptions and hiring practices, as required. (ADA Title II - 35 CFR Part 35.130 (b)(7) (**Recommended**))
5. Provide Reasonable Accommodations to qualified individuals with disabilities. (ADA Title II - 35 CFR Part 35.140 (a)) (**Recommended**)
6. Maintain accessible features (ADA Title II - 28 CFR Part 35.133 (a) (**Recommended**))
7. Provide auxiliary aids and services to ensure effective communications to those with disabilities. {ADA Title II- 28 CFR Part 35.160) (**Recommended**) and adopt Web Content Accessibility Guidelines 2.0 AA or Section 508 Standards (**Completed per website provider, 2018**)
8. Establish a 5-13 member Commission on Disability (MA General Laws C40 s8J (**Recommended**))

#1-3 Completed, 2018.

#4 ADA Recommendations - Municipal Policies, Procedures, and Practices: Under the ADA, a municipality should have formal, separate policies and procedures pertaining to program accessibility, grievances, communications, equal opportunity and non-discrimination. A municipality should also include separate non-discrimination language in its Employment postings in a form similar to the following:

"The Town of Peru is an Equal Opportunity/ Affirmative Action Employer. We assure you that your opportunity for employment with the Town will be based only on your merit, without regard to race, religion, sex, age, national origin or disability"

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

It is RECOMMENDED that the Town of Peru update or establish separate, written policies, procedures and practices pertaining to ADA program accessibility and communications, similar to their already-established Grievance procedures and Equal Opportunity/Non-Discrimination policies.

#5 ADA Recommendations: Reasonable Accommodations in Employment

Under the ADA, a person is considered a qualified individual with a disability if s/he can perform essential functions of a job with or without a reasonable accommodation. Although the ADA does not require an employer to have job descriptions, they can be used as evidence of the essential functions of the job. Job descriptions should be up-to-date and should differentiate between the essential and the marginal duties of the position.

Peru does create job descriptions that meet the general intent of providing reasonable accommodations. As previously noted, it appears that most job postings contain the following language, "***Equal Opportunity Employer.***"

It is RECOMMENDED that the following additional ADA language be added to each job description or posting:

“ In compliance with the Americans with Disabilities Act, the Town of Peru will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the Town.”

#6 ADA Recommendations - Ongoing Maintenance of Accessible Features

A municipality must maintain in operable working condition those features that are necessary to provide access to services, programs, and activities for all residents and visitors. This includes items such as door closers, sidewalks, parking space signage and striping, ramps and lighting, among many others. Isolated or temporary interruptions in service or access are permitted for maintenance or repairs only.

When weather conditions such as snow and ice may limit or prevent access to Town services, programs, and activities to or within a facility, access must be maintained to ensure that those programs are accessible. Maintenance of accessible features includes the removal of snow from accessible parking spaces; curb ramps and accessible routes of travel and entrances, to a minimum width of 36".

It is RECOMMENDED that the Town of Peru review and include ongoing maintenance duties in departmental policies and in job descriptions for each position, to ensure access to services, programs and activities is provided all year long and in all weather conditions.

#7 ADA Recommendations - Effective Communication, Auxiliary Aids and Services

Local governments must ensure effective communication with all residents and visitors including individuals with disabilities. To ensure communications with individuals who have hearing, vision or speech impairments, municipal governments must provide appropriate auxiliary aids. The type of auxiliary aids or services necessary to ensure effective communication will vary according to the type of communication involved and the needs of the individual. Auxiliary aids include such services or devices as sign language interpreters, assistive listening headsets, telecommunications devices for people who are deaf such as TDD's or video phones, use of 911 telephone interpreter service, Brailed materials, documents in electronic format, audio recordings and large print materials. Telephone emergency services including 911 must provide direct access for individuals with speech and hearing impairments.

It is not necessary to provide sign language interpreters for all interactions with persons who are deaf or hard of hearing. Daily interaction may suffice through written notes or similar means. However, public meetings, interrogations by local police officers, or similar technical interactions require interpreters or assistive listening systems, when requested. It is required that alternative auxiliary aids be available that do not result in financial or administrative burdens to the Town, but meet the needs of the disabled individual.

At the present time, daily interactions in Peru are generally handled by written notes, email or by telephone. Interpretive services are available through Berkshire Health Systems. The Town also utilizes Hamilton Relay Services for the Deaf, on an as-needed basis.

It is RECOMMENDED that the Town obtain one assistive listening device for public meetings, purchase brailed directional signage for all Town Departments and make it a regular practice to provide large print materials for dissemination.

Website Accessibility - The Department of Justice (DOJ) considers websites to be an integral aspect of how Title II entities interact with their citizens and the public and therefore they need to be accessible. There are currently no ADA Standards for accessible information technology, so the DOJ recommends compliance with the W3C Web Content Accessibility Guidelines 2.0.

The Official website for the Town of Peru (<https://www.townofperuma.com>,) is designed by the web-design company CivicPlus, that specializes in municipal websites. Upon request, the web developer is able to maximize the Town website for persons with low vision, for example by adding contrasting colors, larger fonts, HTML tags and text below each image, so a reader can “translate” the image into a spoken description. Peru’s ADA Coordinator contacted Civic Plus for this Self Evaluation and Transition Planning process and they confirmed that the Town website is already ADA Compliant, in terms of the W3C WCA Guidelines.

However, Peru’s municipal website currently does not display current information relative to each departments’ programs and services. A statement of the Town’s compliance with the ADA is not provided anywhere on the website, nor is there any information regarding disability-related issues. There is no information that an assistive listening device is available at the Town Hall, or about the accessibility of different Town-owned facilities. The website does not list TTY phone numbers nor is there any offer of TTY availability. Announcements of upcoming events do not include information regarding accessibility of the event/location. There is no notice posted on the website about the opportunity for requesting accommodations, such as in the following example: