

ORDINANCE #1014

AN ORDINANCE OF THE BOROUGH OF OCEANPORT, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, CREATING THE POSITIONS OF ADA COORDINATOR AND DEPUTY COORDINATOR, PROVIDING NOTICE TO ALL PERSONS OF INTEREST AND ADOPTING GRIEVANCE PROCEDURES UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

BE IT ORDAINED by the Mayor and the Borough Council of the Borough of Oceanport, County of Monmouth, and State of New Jersey, as follows:

Section I. Legislative Authority

This chapter is hereby enacted pursuant to Title II of the Americans with Disabilities Act of 1990 (ADA).

Section II. Employment by Borough in Compliance with Act.

Persons employed by the Borough of Oceanport in a position provided by this chapter shall possess good health and freedom from disabling physical and mental defects which impair the proper performance of the required duties, or which might endanger the health and safety of oneself or others. Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job position after reasonable accommodation is made to their known limitations. If the accommodations cannot be made because it would cause the employer undue hardship, such person may not be eligible.

Section III. Americans with Disabilities Act Coordinator

- A. The Mayor, with the advice and consent of the Borough Council, shall appoint one employee to serve as ADA Coordinator. The ADA Coordinator shall be familiar with the requirements of the ADA and coordinate Borough efforts to comply with and carry out Borough responsibilities under the ADA and the rules promulgated pursuant thereto, including the investigation of complaints alleging violations of the ADA
- B. The Borough shall make the name, office address and telephone number of the ADA Coordinator available to any interested individuals.
- C. The Mayor, with the advice and consent of the Borough Council, may appoint an individual to serve as Deputy ADA Coordinator. The Deputy ADA Coordinator shall assist the ADA Coordinator and perform such duties as required by the ADA Coordinator.
- D. The term of office for the ADA Coordinator and Deputy ADA Coordinator shall be for one year, commencing on January 1 of the year of appointment and ending on December 31 of the year of appointment.

Section IV. Notice

- A. The Borough shall disseminate sufficient information to inform all interested persons of the rights and protections afforded by ADA and the rules promulgated pursuant thereto related to the responsibilities of the Borough of Oceanport. This information shall be provided in a manner consistent with the federal rules for effective communication.
- B. The Borough may fulfill this requirement by publishing the notice periodically in local newspapers, placing the notice on the Borough's website, posting the notice at Borough facilities and including the notice in Borough publications.

Section V. Grievance Procedure

A. General procedure.

- (1) The Borough has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded

from participation in, be denied the benefits of or be subjected to discrimination” in programs or activities sponsored by a public entity.

- (2) All grievances should be addressed to the Borough’s designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address: ADA Coordinator, Borough of Oceanport, 315 E. Main Street, Oceanport, NJ 07757.
- (3) A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA Coordinator.
- (4) A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)
- (5) An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the Borough’s designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.
- (6) In most cases, a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.
- (7) The ADA Coordinator will maintain the files and records of the agency relating to the grievances filed.
- (8) The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person’s pursuit of other remedies such as the filing of an ADA grievance with the responsible federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedures is not a prerequisite to the pursuit of other remedies.
- (9) The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing federal rules.

B. Designated ADA Coordinator.

- (1) The designated coordinator of ADA compliance and complaint investigation for the Borough is: ADA Coordinator, Borough of Oceanport, 315 E. Main Street, Oceanport, NJ 07757.
- (2) All inquiries regarding the Borough’s compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in **B.(1)** above.
- (3) All grievances alleging that the Borough has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA Coordinator identified in this section, in accordance with **Subsections B through F**.

C. Grievance procedure. A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA Coordinator identified in **Subsection B** within 30 days of the grievant becoming aware of the alleged violation.

D. Grievance contents.

- (1) A grievance submitted pursuant to this section may be submitted in or on the form set forth at **Subsection E**.
- (2) A grievance submitted pursuant to this section shall include the following information:
 - (a) The name of the grievant and/or any alternate contact person designated by the grievant to receive communication or provide information for the grievant;
 - (b) The address and telephone number of the grievant or alternate contact person; and

(c) A description of manner in which the ADA has not been complied with or has been violated, including times and locations of event and names of witnesses if appropriate.

E. Grievance form.

(1) The following form may be utilized for the submission of a grievance pursuant to this subchapter:

Americans with Disabilities Act Grievance Form

Date:

Name of grievant:

Address of grievant:

Telephone number of grievant:

Name, address and telephone number of alternate contact person:

Department alleged to have denied access:

Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of employees or other persons involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. Attached additional pages, if necessary.

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access.

(2) A copy of the above form may be obtained by contacting the designated ADA Coordinator identified.

F. Investigation.

(1) Upon receipt of a grievance submitted pursuant to this section, the designated ADA Coordinator will notify the grievant of the receipt of the grievance and the initiation of an investigation into the matter. The designated ADA Coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the grievance, if practicable, or unless a later date is agreed to by the grievant.

(2) Upon completion of the investigation, the designated ADA Coordinator shall prepare a report for review by the designated decision maker for the Borough. The designated decision maker shall render a written decision within 45 days of receipt of the grievance, if practicable, or unless a later date is agreed to be the grievant, which decision shall be transmitted to the grievant and/or the alternate contact person if so designated by the grievant.

Section VI. Self-evaluation.

A. The ADA Coordinator shall evaluate all Borough programs and services to insure equal opportunity and equal access.

B. The ADA Coordinator shall distribute the self-evaluation plan and permit comment thereon by all interested parties.

C. The ADA Coordinator shall in all respects comply with the federal rules adopted pursuant to the ADA, and the self- evaluation shall be kept on file for a period of three years.

Section VII. Maintenance of accessible features.

A. The Borough shall maintain in proper working condition those features of facilities and equipment that are required to be accessible and usable by persons with disabilities.

B. This chapter of the Borough Code shall not be interpreted to prohibit reasonable shutdown times for repairs.

Section VIII. Employment practices.

A. The hiring practices of the Borough shall not discriminate against persons with disabilities.

B. All job descriptions shall precisely and accurately describe the essential functions of the job performed by each employee.

C. Job applications shall pertain strictly to job performance.

D. All job interviews shall be limited to questions concerning the applicant's ability to perform the job.

E. The interviewer shall not inquire about disabilities or conduct tests that screen out people with disabilities.

F. Question about the applicant's addiction to alcohol or drugs shall not be asked.

G. The Borough shall not conduct medical examinations or inquiries of job applicants prior to an offer of employment. The Borough may, however, require medical examinations and/or inquiries after making an offer of employment to a job applicant and before the applicant begins employment with the Borough. The Borough may condition an offer of employment on the results of the medical examination or inquiry. If the Borough chooses to conduct such medical examinations or inquiries, all entering employees in the same job category shall be subject to the examination or inquiry regardless of disability.

H. Any medical information obtained from employee medical examinations and inquiries shall be maintained on separate forms and shall be treated as confidential and not kept in an employee's personnel file.

I. Persons with mental or physical disabilities are eligible as long as they can perform the essential functions of the job after reasonable accommodation is made to their known limitations. If the accommodation cannot be made because it would cause the employer undue hardship, such person may not be eligible.

Section IX. Program accessibility.

A. The Borough shall make reasonable accommodations to make its facilities accessible to and usable by individuals with disabilities. An individual shall not be excluded from participation in or be denied the benefits of the services, programs or activities of the Borough due to disability.

B. The Borough shall make reasonable accommodations to its facilities as required by the ADA.

C. The Borough shall prepare a transition plan setting forth the steps necessary to complete the structural changes in all public facilities. All interested persons, including individuals with disabilities, shall be able to participate in the development of the transition plan. After completion, a copy of the transition plan shall be made available for public inspection. The transition plan shall include, at a minimum, the following:

(1) Identification of physical obstacles in the Borough's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Description in detail of the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance;

(4) Indicate the official responsible for implementation of the plan;

(5) Indicate why certain Borough facilities cannot be made accessible.

D. Effective immediately, the new construction and alternation provisions of the ADA and the regulations adopted pursuant thereto shall apply to all Borough construction.

Section X. Communications.

A. The Borough shall take whatever steps may be necessary to ensure that communications with applicants, participants and members of the public with disabilities are as effective as communications with others.

B. Auxiliary aids and services shall be furnished to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the Borough's services, programs and activities.

C. The Borough shall equip emergency systems with telecommunications devices for the deaf (TDDs) and computer modems.

D. All Borough communications, including the public notices required by Section IV of this chapter, shall comply with the communication requirements of the ADA and the regulations adopted pursuant thereto.

E. The Borough shall place an appropriate access statement on all public communications.

BE IT FURTHER ORDAINED that the public hearing on this Ordinance shall take place on December 19, 2019.

APPROVED ON FIRST READING

DATED: November 7, 2019

JEANNE SMITH

Clerk of the Borough of Oceanport

ADOPTED ON SECOND READING

DATED: December 19, 2019

JEANNE SMITH

Clerk of the Borough of Oceanport

APPROVAL BY THE MAYOR ON THIS _____ DAY OF _____.

JOHN F. COFFEY, II

Mayor