



City Clerk Department

September 27, 2024

To: Commission Secretaries

From: Mark Numainville, City Clerk

Subject: Fisher et al. v. City of Berkeley, Case No. 3:23-cv-04280-TSH –  
Accommodation for Commissioners with Disabilities

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Pursuant to the settlement of Fisher et al. v. City of Berkeley, United States District Court, Northern District of California; Case No. 3:23-cv-04280-TSH, the City is implementing a new policy regarding the remote attendance of commissioners at commission meetings as a reasonable accommodation for a disability. This policy is effective immediately. This memo is provided as a preliminary notice of the new policy due to the legal deadline to enact the policy and post it to the website.

Under the new policy, commissioners that request an accommodation to participate in commission meetings remotely will be offered a form that will allow them to self-attest to their need for remote participation. Commissioners that receive an approved accommodation request may participate in commission meetings remotely. Upon self-attesting to their need to do so, commissioners with an approved accommodation may also participate remotely without listing their remote location on the agenda, allowing public access at their remote location, or posting the agenda at their remote location.

For your reference, attached you will find the new policy titled “Exhibit A - Accommodations Policy” as well as the new form titled “Reasonable Accommodation Request – Self-Attestation.” The policy and the form are posted to the City website.

The ADA Program Coordinator will accept, review, and approve the accommodation requests and coordinate with secretary on the best manner to provide the accommodation. More information on the process for conducting meetings with remote participation will be provided soon.

Attachments:

1. Exhibit A – Accommodations Policy
2. Exhibit B – Reasonable Accommodation Request – Self-Attestation

Accommodation for Commissioners with Disabilities

September 27, 2024

cc: Paul Buddenhagen, City Manager  
LaTanya Bellow, Deputy City Manager  
Anne Cardwell, Deputy City Manager  
Department Heads  
Farimah Brown, City Attorney  
Stephen Hylas, Deputy City Attorney

## **CHAPTER II, C. ACCOMMODATIONS FOR COMMISSIONERS WITH DISABILITIES**

Members of boards, commissions, and the public who have a disability have a right to reasonable accommodations necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication in order for people with disabilities to be able to participate in the City's programs, services, and activities including public meetings. More information is available on page 48 and in Appendix H on page 97.

Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the ADA Program Coordinator, who will evaluate the individual's request and determine the appropriate method of accommodation. If possible, individuals are asked to attempt to make a disability-related accommodation request 72 hours in advance of meetings to ensure that the City has an adequate opportunity to provide reasonable accommodation. The City will make good faith efforts to provide accommodations that are requested less than 72 hours in advance of a meeting.

Requests to the ADA Program Coordinator can be made by calling the ADA Program Coordinator at (510) 981-6418 or emailing [ada@berkeleyca.gov](mailto:ada@berkeleyca.gov).

### **Appendix H**

## **RESPONDING TO REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES**

### **Procedures for Members of Boards and Commissions and Staff**

Members of boards, commissions, and the public who have a disability may have a right to receive reasonable accommodations, if necessary for them to participate in City meetings and programs. The Americans with Disabilities Act (ADA) and other laws mandate that the City provide programmatic access and effective communication in order that people with disabilities are able to participate in the City's programs, services, and activities including public meetings. (See "What the ADA Says About Accommodations" below.)

Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the ADA Program Coordinator. An analysis will be initiated on a case-by-case basis to evaluate the individual's request and determine the appropriate method of accommodation. If possible, individuals are asked to make disability accommodation requests at least 72 hours in advance of their desired committee meeting and implementation date. The City will make good faith efforts to provide accommodations that are requested less than 72 hours in advance of a meeting.

The ADA Program Coordinator will respond to accommodation requests according to the criteria below:

1. Review of the accommodation request:

- a. Nature of the accommodation and why the accommodation is needed.
  - b. Estimated duration of the requested accommodation.
  - c. Commission assignment or meeting for which the accommodation is requested.
  - d. Estimated duration of the assignment.
2. The ADA Program Coordinator and Commission Secretary will promptly act on the accommodation, determine the most effective way to provide an accommodation, coordinate the details with the individual with a disability and follow through to ensure the accommodation's success.
3. Any doubt should be resolved in favor of accommodation and accessibility.

The ADA Program Coordinator and Commission Secretary shall oversee the vendor payment process.

All reasonable accommodation request responses shall be provided in writing, when such written response can be transmitted in a timely manner prior to the start of the specific meeting. Otherwise, the response will otherwise be provided orally. Responses will identify whether the accommodation is granted, granted in part, or whether an alternative accommodation is granted, and will also identify any instructions necessary to access the accommodation. If denied the response will identify and the grounds for denial. City staff will document requests and responses provided orally.

### **CONSIDERATIONS FOR SELECTING ACCOMMODATION METHODS**

The person requesting an accommodation should make the request in advance to allow adequate time for staff to make any arrangements. Staff may be able to provide an accommodation directly, but it can take time to arrange an accommodation from a service vendor, through the use of assistive technology (equipment), or through modification in the way an activity is conducted. Accommodations must be reasonable in accordance with the ADA and other applicable laws.

Examples of accommodations include but are not limited to:

- Assistance with writing and other tasks for persons with manual impairments.
- Interpreters or captioning for persons with hearing impairments.
- Speakers for persons with speech impairments.
- Braille, large print, or electronic versions of printed text and descriptions or tactile representations of graphics for persons with vision or other print-related impairments.
- Remote attendance at meetings (see below).

The City provides accommodations for participation in regular or special board and commission meetings, meetings with City staff, and meetings of subcommittees of boards and commissions where applicable. The City does not provide accommodations for activities sponsored by

another agency or for an individual engaged in community activities that are not official activities of the City.

## **REQUESTS TO ATTEND MEETINGS REMOTELY AS AN ACCOMMODATION**

When a commissioner or board member requests remote or teleconference attendance at City meetings as an accommodation for a disability that prevents them from attending the meeting in person, such as but not limited to an immunocompromising disability or a disability that limits time spent outside of home or bed, the following procedures will be followed. The individual should attempt to make disability accommodation requests for remote attendance at least 72 hours before the time of the first meeting for which remote attendance is requested. The City will make good faith efforts to provide remote attendance accommodations that are requested after this time. “Teleconference” or “teleconferencing” as used in this policy means a connection by electronic means through either audio or video, or both.

1. The following information should be included in any request:
  - a. A self-attestation that the accommodation is needed as a result of a disability and a general description of why it is needed. A general description ordinarily need not exceed 20 words and shall not require the member to submit medical documentation or disclose any specific medical diagnosis or disability.
  - b. Estimated duration of the requested accommodation.
  - c. Commission assignment or meeting(s) for which the accommodation is requested.
  - d. Estimated duration of the assignment.
2. In consultation with the individual with a disability, the ADA Program Coordinator will determine the most effective way to provide the accommodation, ensure the technology used to provide the accommodation is functional and effective, coordinate the details with the individual with a disability, and follow through to ensure its success. Videoconference will be provided unless another technology is requested.
3. Individuals may be granted a teleconferencing accommodation on a permanent basis or on a temporary basis. The duration of any accommodation will be determined in accordance with the individual’s disability-related needs. There is no formal limit on the number of meetings an individual may attend remotely; the individual may attend remotely for the duration permitted by their accommodation.
4. When remote attendance is provided as a disability accommodation, the ADA Program Coordinator will waive the requirements that each teleconference location be identified in the notice and agenda, that agendas be posted at each teleconference location, and that each teleconference location be accessible to the public, as follows. Waiver of these requirements will be based on whether individuals who require remote attendance as an accommodation cannot invite others into their home or other location for disability-related reasons, or may otherwise be subject to privacy intrusions or unwarranted harassment if these requirements are not waived. Any doubts will be resolved in favor of accessibility and the individual with a disability.

5. A commissioner or board member appearing remotely as an accommodation shall publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals. This requirement shall not apply if the commissioner or board member includes a self-attestation exempting them from this requirement.

## WHAT THE ADA SAYS ABOUT ACCOMMODATIONS

The ADA describes accommodations generally as “reasonable modifications in policies, practices, or procedures” (28 C.F.R. Section 35.130(b) (7)). Unless the City can demonstrate that a modification would fundamentally alter the nature of the service, program, or activity, the City must make reasonable modifications when necessary to allow an individual with a disability to participate in the City's services, programs, and activities (28 C. F. R. Section 35.130(b)(7)).

Although the City is not required to provide devices or services that are of a personal nature (such as eyeglasses, hearing aids, or mobility devices), the ADA requires that communication with disabled members of the public be effective, including the provision of auxiliary aids and services necessary for effective communication with the City.

Regarding effective communication, the ADA's specific language is:

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. (28 C. F. R. Section 35.160)

Auxiliary aids and services include:

(1) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments.

(2) Qualified readers, taped texts, audio recordings, braille materials, large Responding to Requests for Accommodations for Persons with Disabilities page print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments. Web content on the City of Berkeley website and electronic documents created for use at public meetings will be in compliance with accessibility standards required by the ADA.

(3) Acquisition or modification of equipment or devices.

(4) Other similar services and actions. (28 C. F. R. Section 35.104 (in part))

