



**ADA Consultants of Indiana**

**P.O. Box 248 Waynetown, Indiana 47990**

**(765) 234-2ADA**

**[www.adaconsultantsofindiana.com](http://www.adaconsultantsofindiana.com)**

# **Rush County, IN Ordinance Review Report**

**Access to programs, services, and activities**

**May 7, 2013**

# Table of Contents

Table of Contents.....	1
References .....	2
Abbreviations .....	2
Facility Information.....	3
Evaluation Information .....	3
Current Code.....	3
Intent of this Report.....	4
General Information .....	5
Subpart B General Requirements .....	5
County Commissioners Book 4 .....	8
County Commissioners Book 3 .....	21
County Commissioners Book 5 .....	23
Rush County, Indiana Personnel Policies Handbook .....	26
Other Older Ordnances.....	27
End of Report .....	28

## **References:**

- The United States Department of Justice
- Americans with Disabilities Act
- ADA Technical Assistance Manuals
- ADA.gov; a website hosted by the DOJ with links to multiple areas applicable to the Americans with Disabilities Act.
- ADA National Network
- U.S. Access Board
- Great Lakes ADA Center
- Accessibility Online; ADA training programs through audio conferences and webinars
- Section 504 and 508 of the Rehabilitation Act

## **Abbreviations:**

<b>ADA – Americans with Disabilities Act</b>	<b>DOJ – Department of Justice</b>
<b>CRT -Court</b>	<b>CFR – Code of Federal regulations</b>
<b>AG-Attorney General</b>	<b>RIN – Regulatory Information Number</b>
<b>U.S. – United States</b>	

## **Facility Information:**

### **Facility Address:**

Rush County Building  
20. North Third St.  
Lafayette, IN 47901

### **ADA Coordinator:**

Katherine Meyer, Area Plan Commission Director

## **Evaluation Information:**

### **Evaluation Consultant:**

Keri Grubb, Title II Consultant, ADA Consultants of Indiana

### **Report Preparation:**

David Meihls, Principal Consultant, ADA Consultants of Indiana

Keri Grubb, Title II Consultant, ADA Consultants of Indiana

## **Current Code:**

**DEPARTMENT OF JUSTICE**

**Americans with Disabilities Act Title II Regulations**

**28 CFR Part 35**

**[CRT Docket No. 105; AG Order No. 3180- 2010]**

**RIN 1190-AA46**

**Nondiscrimination on the Basis of Disability in State and Local Government Services**

**AGENCY:** Department of Justice, Civil Rights Division

**Published:** September 15, 2010 **Effective:** March 15, 2011

## **Intent of this report:**

The following report has been prepared for Rush County, IN and its residents regarding programs, services, and activities provided by the County. It is intended to serve as a guide as they strive to become compliant with the Americans with Disabilities Act laws and regulations. Under Title II of the ADA, public entities are required to conduct a self-evaluation to ensure that persons with disabilities are not excluded from or denied participation in their programs, services and activities. This report is a compilation of findings from Rush County's Ordinance review. This report includes information about how each finding violates the ADA and specific code that pertains to the infraction. However, some policies and ordinances may not be designed to intentionally exclude, deny or discriminate against persons with disabilities, but the actual process of carrying certain procedures and practices may unintentionally cause discrimination. Each item should be looked at carefully and steps should be taken to ensure persons with disabilities are not discriminated against. Recommended Corrections have been included along with space to record Action Steps taken by the County.

As part of the self-evaluation, a public entity should:

- 1) Identify all of the public entity's programs, activities, and services; and
- 2) Review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

Normally, a public entity's policies and practices are reflected in its laws, ordinances, regulations, administrative manuals or guides, policy directives, and memoranda. Other practices, however, may not be recorded and may be based on local custom.

Rush County is taking a proactive approach by pursuing equality to program access. The recommendations and suggestions provided to reach compliance are based on information supplied by Department of Justice and other resources considered to be best practice.

## **General Information:**

Reference- Americans with Disabilities Act Title II, Part 35 Nondiscrimination on the Basis of Disability in State and Local Government Services (*as amended by the final rule published on September 15, 2010*)

## **Subpart B—General Requirements**

### **§ 35.130 General prohibitions against discrimination**

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of

entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) 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.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)

(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.



Date reviewed: 10/10/2012

**County Commissioners Book 4 2005-2011:**

Amended Ordinance 1994-5, RUSH COUNTY EMERGENCY MANAGEMENT ORDINANCE –  
Effective Sept 12, 2011

o **Article 3, Section 6 – EMERGENCY POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS**

h) the Commissioners may make provisions for the availability and use of temporary housing, which housing need not necessarily comply with any minimum housing standards, building or zoning regulations etc., which would govern the use and location of premises for housing purposes for housing during normal times.

➤ **Finding:**

- *The above statement does not adhere to the ADA requirement to provide equal access to persons with disabilities; this includes emergency services that provide temporary housing.*

28 CFR Subpart B –General Requirements

§ 35.130 General prohibitions against discrimination (b)

(4) A public entity may not, in determining the site or location of a facility make selections-

(i) That have the effect of excluding individuals with disabilities from, denying them of benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

❖ **Recommended Corrections:**

- An important element in emergency management is advance planning. Evaluate your current facilities that are designated as emergency shelters or places for temporary housing for accessibility. Evaluate and designate back-up facilities in the event that the existing facilities cannot be used or more space is needed to house additional persons.
- Amend the ordinance to reflect the specific changes, add a statement saying that the County will take the accessibility features of a facility into consideration when designating a site for emergency sheltering and or temporary housing.

✓ **Action Taken:**

Date:

Implemented By:

Amended Ordinance 1994-5, RUSH COUNTY EMERGENCY MANAGEMENT ORDINANCE – Effective Sept 12, 2011

o **Article 3, Section 6 – EMERGENCY POWERS AND DUTIES OF THE BOARD OF COMMISSIONERS**

j) in the event of enemy attack, or when a state of emergency has been proclaimed by the Governor, the Commissioners may also waive any procedures or requirements of statute, or ordinances reflecting statutory requirements and mandates, and pertaining to the appropriation and expenditure of public works funds, the incurrence of obligations, the performance of public works, the entering into of contracts, the employment of temporary workers or utilization of volunteer workers, the rental of equipment, or the purchase and distribution of supplies, materials, and facilities;

➤ **Finding:**

- *The requirement to provide equal access to programs, services and activities to persons with disabilities applies to all aspects of emergency management procedures that affect the public. Waiving procedures, ordinances or statutes could potentially cause discrimination against persons with disabilities.*

28 CFR Subpart B – General Requirements

§35.130 General prohibitions against discrimination. (a)

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

ADA Best Practices Tool Kit-Chapter 7-Emergency Management Under Title II of the ADA

A. ADA Basics for Emergency Management

State and local governments must comply with Title II of the ADA in the emergency- and disaster-related programs, services, and activities they provide.<sup>1</sup> This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties, such as the American Red Cross, private nonprofit organizations, and religious entities.

❖ **Recommended Corrections:**

- Ensure in waiving any ordinances, statutes, requirements, or procedures that the effects of that waiver do not exclude or deny persons with disabilities equal access to programs, services, and activities, offered during the emergency or cause discrimination in any way.
- Amend the ordinance and add a statement saying that any waiver that is executed in an emergency situation may not exclude or deny persons with disabilities equal access to programs, services, and activities, offered during the emergency or cause discrimination in any way.

✓ **Action Taken:**

Date:

Implemented By:

Amended Ordinance 1994-5, RUSH COUNTY EMERGENCY MANAGEMENT ORDINANCE – Effective Sept 12, 2011

○ **Article 2 Section 4 – COORDINATOR OF EMERGENCY MANAGEMENT; GENERAL POWERS AND DUTIES**

g) the Coordinator may seek and accept from any person, firm or corporation, any gratuitous offers to provide services, equipment, supplies, materials, funds or licenses, or privilege to use as real estate or other premises, to the County for emergency management purposes.

➤ **Finding:**

- *Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with Title II regulations in supplying those services.*

CFR 28 Subpart B General Requirements

§35.130 General prohibitions against discrimination. (b) (1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii)

❖ **Recommended Corrections:**

- Ensure that the person, firm or corporation that the County is accepting services, aids, or benefits (that directly affect the public) from, complies with the Title II Regulations in the provision of those benefits, aids, and or services. Provide a contract or agreement with the person, firm or corporation providing the gratuity; the contract or agreement should include language stating;

(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services and activities (including those offered and or provided during emergencies) and

(2) that the person, firm or corporation supplying services to the County must provide said benefits, aids and or services in a manner that complies with Title II of the ADA.

✓ Action Taken:

Date:

Implemented By:

Amended Ordinance 1994-5, RUSH COUNTY EMERGENCY MANAGEMENT ORDINANCE  
–Effective Sept 12, 2011

o **Article 2 Section 12 – VITAL SUPPORT SERVICES GROUP; RETAIL SUPPORT SERVICES GROUP; FORMATION; DUTIES**

There shall be a group known as the Vital Support Services Group, comprised of service agencies, hospitals, utilities, the local chapters of the Salvation Army and the American Red Cross, the Humane Society, and other services deemed necessary by the Coordinator of the Department of Emergency Management. (a) (b)

There shall be a group known as the Retail Support Services Group comprised of local and area merchants and other retailer deemed necessary the Coordinator of the Department of Emergency Management.

- a) Members of this group will be contacted by the Coordinator and/or Chief Executive Officer of the County to provide special training, skills, or equipment may be needed in the event of an emergency in the County.

➤ **Finding 1:**

- *Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with ADA Title II regulations in supplying those services.*

ADA Best Practices Tool Kit-Chapter 7-Emergency Management Under Title II of the ADA

A. ADA Basics for Emergency Management

State and local governments must comply with Title II of the ADA in the emergency- and disaster-related programs, services, and activities they provide.<sup>1</sup> This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties, such as the American Red Cross, private nonprofit organizations, and religious entities.<sup>2</sup>

CFR 28 Subpart B General Requirements

§35.130 General Prohibitions against discrimination (b) (1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii)

➤ **Finding 2:**

- *All staff, volunteers, and anyone providing services to the public, have a need for a wide range of disability information in order to appropriately address the Disability Civil Rights issues that may come before them as they conduct business, provide services, etc. Rush County Emergency Management Support Service Groups have not received any formal training in regards to the many aspects of the ADA in relationship to Emergency Management.*

Title II Technical Assistance Manual, II-8.2000 Self-evaluation

12) A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.

❖ **Recommended Corrections:**

- **1.** Ensure that the members of the Vital Support Services Group and the Retail Support Services Group complies with ADA Title II Regulations by providing a contract or agreement between the County and each member/organization of the support services group; the contract or agreement should include language stating;  
  
(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services and activities (including those offered and or provided during emergencies) and  
(2) that the person, firm or corporation supplying services to the County must provide said benefits, aids and or services in a manner that complies with Title II of the ADA.
  
- **2.** Provide ADA Emergency Management training for the members of the Support Services Groups, volunteers, and anyone who works in conjunction with the County regarding Emergency Management.

✓ Action Taken:

Date:

Implemented By:



Mutual Aid Agreement – Resolution NO. 2005 – 1

- **A RESOLUTION TO AUTHORIZE THE COMMISSIONERS OF RUSH COUNTY, INDIANA, TO SIGN EMERGENCY MANAGEMENT, HOMELAND SECURITY, EMERGENCY MEDICAL SERVICES, LAW ENFORCEMENT, FIRE, HAZARDOUS MATERIALS, COMMUNICATIONS, TRANSPORTATION, PUBLIC HEALTH, HUMAN SUPPORT SERVICES, PUBLIC WORKS, PLANNING AND INFORMATION SERVICES, RESOURCE SUPPORT AND SEARCH AND RESCUE “MUTAL AID AND INTERLOCAL COOPERATION AGREEMENTS” WITH OTHER LOCAL GOVERNMENTS AND/OR STATE AGENCIES IN THE STATE OF INDIANA:**

➤ ***Finding :***

- *Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with ADA Title II regulations in supplying those services.*

ADA Best Practices Tool Kit-Chapter 7-Emergency Management Under Title II of the ADA

A. ADA Basics for Emergency Management

State and local governments must comply with Title II of the ADA in the emergency- and disaster-related programs, services, and activities they provide. This requirement applies to programs, services, and activities provided directly by state and local governments as well as those provided through third parties, such as the American Red Cross, private nonprofit organizations, and religious entities.

CFR 28 Subpart B General Requirements

§35.130 General Prohibitions against discrimination (b) (1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii)

❖ **Recommended Corrections:**

Ensure that entities the County is forming a Mutual Aid agreement with comply with ADA Title II Regulations by providing a contract or agreement between the County and the other entities, the contract or agreement should include language stating;

(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services and activities (including those offered and or provided during emergencies) and

(2) that the entity supplying the aid and/or services to the County must provide said benefits, aids and or services in a manner that complies with Title II of the ADA.

✓ **Action Taken:**

Date:

Implemented By:

Amended Ordinance 1998-4 (Amended December 5, 2011)

- 1. The following are the purchasing rules for Rush County, Indiana:

- g. Purchase of Services

The County determines that each agency, department and office and elected County official may purchase services in whatever manner the purchaser determines to be reasonable.

The County purchasing agency may not require any County agency, department or office, or any elected County official, to purchase services in any particular manner.

➤ **Finding 1:**

- *Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with ADA Title II regulations in supplying those services.*

CFR 28 Subpart B General Requirements

§35.130 General Prohibitions against discrimination (b) (1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii) and (2) and (3)(i)(ii)(iii)

➤ **Finding 2:**

- *Title II entities may not discriminate on the basis of disability in contracting for the purchase of goods and services.*

CFR 28 Subpart B General Requirements

§35.130 General Prohibitions against discrimination (b) (5)

A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

❖ **Recommended Corrections:**

- **1. a)** Ensure that employees who purchase services for the County comply with Title II regulations in doing so. Amend the ordinance and include the following statement (or something similar) after the phrase ending: “to be reasonable.”

However, for services that directly affect the public, purchasers must ensure that the provision of the services being purchased does not discriminate against persons with disabilities and are provided in accordance with Title II regulations of the Americans with Disabilities Act.

- **1. b)** Add the following statement (or something similar) after the phrase ending: “to purchase services in any particular manner”:

, except that the manner shall comply with Title II regulations under the Americans with Disabilities Act.

- Ensure that the purchasers have contracts available to them that include language stating;
  - (1) the County’s obligations to comply with Title II regulations under the ADA in all of its programs, services and activities and
  - (2) the entity supplying the aid and/or services to the County must provide said benefits, aids and or services in a manner that complies with Title II of the ADA.
- **2.** Add the following statement (or something similar) to the ordinance:

In the selection of procurement contractors, purchasers may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

✓ **Action Taken:**

Date:

Implemented By:

Resolution No. 2007-3, Amended 2011-5

- **Resolution authorizing the filing of an application for a grant under Section 5311 of the Federal Transit Act, as amended**

➤ **Finding :**

- *Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with ADA Title II regulations in supplying those services.*

CFR 28 Subpart B General Requirements

§35.130 General Prohibitions against discrimination (b) (1)

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii)

❖ **Recommended Corrections:**

Ensure that the agencies the County is authorizing to file applications for them complies with ADA Title II Regulations by providing a contract or agreement between the County and the agency filing the applications, the contract or agreement should include language stating;

(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services including those made through contractual agreements

(2) the entity providing services to the County must provide said services in a manner that complies with Title II of the ADA.

✓ **Action Taken:**

Date:

Implemented By:

**County Commissioners Book 3 1998-2004:**

Ordinance 2002 -2

o **An Ordinance adopting Construction Standards**

2. A set of uniform standards for the construction of infrastructure throughout Rush County, Indiana, are hereby adopted. All persons building homes, developing subdivisions, building roads, or constructing any other type of infrastructure in Rush County, Indiana, shall follow said uniform, standards construction. Said construction standards may be found at the Rush County Area Plan office.

➤ **Finding:**

- On December 17, 2012, the County adopted the 2010 ADA Standards for Accessible Design (ADAAG) and the proposed PROWAG for new construction and alterations. The County needs to ensure that the 2002 ordinance is no longer in effect and the newly adopted standards are the only ones under the County's current code.

28 CFR Subpart D – Program Accessibility

§ 35.151 New construction and alterations

(a) Design and construction;

Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 and

(b) Alterations

Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

❖ **Recommended Corrections:**

▪ *Ensure ADAAG-Americans with Disabilities Accessibility Guidelines and PROWAG-Pedestrian Rights of Way Accessibility Guidelines are the only codes in effect for new constructions and alterations. Ensure the previous code is null and void.*

▪ *Ensure Contracts regarding new construction and alterations contain statements that include the following:*

(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services including those made through contractual agreements

(2) the entity providing services to the County must use the 2010 Standards and PROWAG in all construction and alteration projects.

✓ **Action Taken:**

Date:

Implemented By:

## **County Commissioners Book 5 2012-Current**

Ordinance 2012-12

○ **Establishing a Community Corrections Program**

▪ **V. SECTION 4. ACQUISITION OF PROPERTY AND FACILITIES; FUNDING; AND PRIVATE AGENCIES**

A. Rush County may acquire premises and facilities for community corrections programs by purchase, lease, or gift, or any other method allowed by law. These facilities and programs may be established and operated under a written contract with existing public or private agencies or institutions.

➤ **Finding 1**

- *The first sentence after letter A. in the above section may not adhere to the ADA requirement to provide equal access to persons with disabilities;*

28 CFR Subpart B –General Requirements

§ 35.130 General prohibitions against discrimination (b)

(4) A public entity may not, in determining the site or location of a facility make selections-

(i) That have the effect of excluding individuals with disabilities from, denying them of benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

➤ **Finding 2**

- *This applies to the second sentence after A. in the above section. Title II entities are responsible for ensuring that the agencies that they have contracts or arrangements for services with, comply with ADA Title II regulations in supplying those services.*

CFR 28 Subpart B -General Requirements

§35.130 General Prohibitions against discrimination (b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability – (i); (ii); (iii); (iv); (v); (vii)



❖ **Recommended Corrections:**

- 1. Evaluate the facilities for accessibility that may potentially be used as community corrections facilities. If they are not accessible or cannot easily be made accessible, choose another facility that is accessible.

Amend the ordinance to reflect the specific changes, add a statement saying that the County will take the accessibility features of a facility into consideration when designating a community corrections facility or site.

- 2. Ensure that the agencies the County is acquiring programs and/or services from complies with ADA Title II Regulations by providing a contract or agreement between the County and the agency providing said programs and/or services, the contract or agreement should include language stating;

(1) the County's obligations to comply with Title II regulations under the ADA in all of its programs, services including those made through contractual agreements

(2) the entity providing services to the County must provide said services in a manner that complies with Title II of the ADA.

✓ **Action Taken:**

Date:

Implemented By:

Ordinance 2012-12

○ **Establishing a Community Corrections Program**

- IV SECTION 5 MEMBERSHIP OF THE COMMUNITY CORRECTIONS ADVISORY BOARD

10. the following members appointed by the County Executive:

- f. four lay persons, at least one (1) of whom must be a member of a minority race if a racial minority resides in the County and a member of that minority is willing to serve.

➤ **Finding**

- It is also important to also include persons with disabilities as members on boards, committees and planning activities. Besides providing equal opportunity, they may have valuable insight on how to handle an issue or provide a different perspective. Even if requirements restrict membership of boards, committees, etc. to certain officials, employees, etc., any type of community planning should consider how all aspects of the program, service, activity, and or facility will affect persons with disabilities.

CFR 28 Subpart B -General Requirements

§35.130 General Prohibitions against discrimination (b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability –

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

❖ **Recommended Corrections:**

- Add a provision to the end of the statement (10 f) that is similar to the one below:  
*.....is willing to serve* and at least one (1) of whom must be a person with a disability, if a person with a disability resides in the County and is willing to serve.

✓ **Action Taken:**

Date:

Implemented By:

## **RUSH COUNTY, INDIANA PERSONNEL POLICIES HANDBOOK**

- 4.6 Americans with Disabilities Act (ADA)

Pg. 46, last two paragraphs

Members of the public, including individuals with disabilities and groups representing individual with disabilities, are encouraged to submit suggestions to the County ADA Coordinator (the County Auditor) on how Rush County might better meet the needs of individuals with disabilities pursuant to this policy.

Any individual who believes he/she has received treatment inconsistent with the policies set forth above or any other requirement of the Americans with Disabilities Act (ADA), can file a complaint within ninety (90) days of the date of the alleged discriminatory act or practice with the County ADA Coordinator (the County Auditor).

➤ ***Finding***

- It is mentioned two times, once in each paragraph that the ADA Coordinator is the County Auditor. Katherine Meyer (Kate) has been designated the County's ADA Coordinator. If the County chooses to have the Auditor oversee ADA employment complaints and issues, and Kate to oversee ADA issues and complaints involving members of the public, this is acceptable. However, it would need to be clarified due to this section of the personnel manual.

CFR 28 Subpart A -General

§35.107 (a) Designation of responsible employee and adoption of grievance procedures.

A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, address, and telephone number of the employee or employees designated pursuant to this paragraph.

❖ **Recommended Corrections:**

- If the County chooses to have the Auditor oversee ADA employee issues, specify this by giving the Auditor an alternate title such as; ADA Employment Coordinator or something similar as Kate holds the title of ADA Coordinator.
- If Kate is to oversee all aspects of the ADA for the County, including employment; then the phrase (the County Auditor) should be replaced with Kate's name, address/location, and phone number.
- As this information changes, update the name, address/location, and phone number of the ADA coordinator in all documents (public and employee) where the ADA Coordinator is mentioned.

✓ **Action Taken:**

Date:

Implemented By:

## **Other Older Ordinances**

The ordinances from 1997 going back were not evaluated due to the fact that many of them have been amended since that time. However, Ordinances adopted in or prior to 1997, may contain provisions and or/statements that may be in violation of the Americans with Disabilities Act. If in the carrying out of one of those older ordinances is questionable in regards to the ADA, please contact ADA Consultants of Indiana or refer to [www.ada.gov](http://www.ada.gov) for assistance.

## **END OF REPORT**

This concludes the report findings of this ADA Self- Evaluation Ordinance Review. Questions regarding the evaluation and this report may be directed to the Principal Consultant David Meihls.

David Meihls

ADA Consultants of Indiana

P.O. Box 248 Waynetown, IN 47990

(765) 234-2ADA

[david@adaconsultantsofindiana.com](mailto:david@adaconsultantsofindiana.com)