

RESOLUTION NO. 67

DATED: MARCH 16, 2011

**RESOLUTION TO ADOPT POLICY REGARDING
COMPLIANCE WITH TITLE II OF
THE AMERICANS WITH DISABILITIES ACT
AND
SECTION 504 OF THE REHABILITATION ACT OF 1973**

WHEREAS, the Town of Batavia has received funding under the Community Development Block Grant (CDBG) Act and is required to take affirmative steps to ensure that the CDBG programs, services and activities are accessible to, and usable by, individuals with disabilities.

NOW, THEREFORE, BE IT

RESOLVED that the Town of Batavia hereby adopts the attached policy statement regarding compliance with Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973; and be it

FURTHER RESOLVED that the Town of Batavia hereby adopts the complaint procedures described in the policy statement to address complaints of discrimination with regard to the ADA and/or Section 504 of the Rehabilitation Act of 1973; and be it

FURTHER RESOLVED that the Town Clerk is hereby directed to post the policy statement in the Town Clerk's Office and to publish a notice regarding the availability of the policy statement and complaint form.

Offered by: Councilwoman Michalak

Second by: Councilman Gerace

Ayes: Michalak, Gerace, Lang, Underhill, Post

APPROVED by unanimous vote (5-0)

CERTIFICATION

**STATE OF NEW YORK}
COUNTY OF GENESEE}**

I hereby certify that the aforementioned is a true and accurate copy of a resolution adopted by the Town of Batavia Town Board on March 16, 2011.

Dated: March 17, 2011

{ S E A L }


Teresa M. Morasco
Town Clerk

Town of Batavia
Policy Regarding Compliance with Title II of the Americans with Disabilities Act
And
Section 504 of the Rehabilitation Act of 1973

As a recipient of funding under the Community Development Block Grant (CDBG) Act, as administered by the NYS Office of Community Renewal, the Town of Batavia is required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities, and that the Town's activities or services are readily accessible to, and usable by, individuals with disabilities. The Town must provide handicapped persons with benefits and services that are as effective as those provided to non-handicapped individuals.

In order to ensure that NYS CDBG programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons, the Town is responsible for providing access to handicapped/disabled persons in four areas: communications, employment opportunities, program benefits and physically accessible housing. The Town will address these issues as follows:

Accessible Communications: In order to ensure accessibility of program services and activities to persons with disabilities, the Town has made provisions for individuals who may need alternate forms of communications. The Town participates in a Telecommunication Device for the Deaf (TDD) relay system. Residents may access this system by calling 1-800-662-1220.

The Town is also prepared to make reasonable accommodations for persons requesting alternative forms of communication at Town Board or other public meetings. Such requests must be submitted to the Town Clerk at least three business days prior to the meeting. Examples of auxiliary aids and services may include qualified sign language interpreters, assistive listening devices, open and closed captioning, note takers, written materials, telephone handset devices, qualified reader, taped texts, audio recordings, Brailled materials, materials on computer disk, and large print materials.

The Town will give primary consideration to the type of auxiliary aid requested by a person with a disability; however, the Town may provide a different type of aid if it can show that it is an effective means of communication.

Access to Employment: The Town must make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the Town. Cost alone does not constitute a hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position and can perform the essential functions of the job with or without reasonable accommodations.

Program Accessibility: The Town recognizes that all services, programs and activities must be accessible to everyone, including persons with disabilities, regardless of the accessibility of the Town's facilities.

The Town may not provide services or benefits to disabled persons through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits or services are equally effective. Even when separate programs are permitted, an individual with a disability has the right to choose to participate in the regular program, and the Town may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.

If programs, services or activities are located in facilities that existed prior to January 26, 1992 (the effective date of Title II of the ADA), the Town will ensure that they are also available to persons with disabilities, unless to do so would fundamentally alter a program, service or activity or result in undue financial or administrative burdens. The Town notes that program accessibility may be achieved by: (1) relocating the program or activity to an accessible facility; (2) providing the activity, service or benefit in another manner that meets ADA requirements; or (3) making modifications to the building or facility itself to provide accessibility.

Physical Accessibility to Programs: The Town has evaluated the Town Hall and made modifications to the facility to ensure the physical accessibility of the building. These modifications included:

- Designation of handicapped accessible spaces in the parking lot.

The Town has also established a policy to install handicapped accessible curb cuts as part of sidewalk replacement work or street improvements, where appropriate.

Accessibility Issues as Related to Housing. The ADA generally does not cover private residential facilities. These facilities are addressed in the Fair Housing Amendments Act, which prohibits discrimination on the basis of disability in selling or renting houses.

Under the provisions of the Fire Administration Authorization Act of 1992, all housing units assisted with Federal funds must be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction and rehabilitation projects on any multi-family or single family housing assisted with NYS CDBG funds. The Town will ensure that this

requirement is met for any NYS CDBG funded rehabilitation program implemented by the Town.

The Town also recognizes that there are other handicap accessibility requirements that apply to all facilities designed, constructed or altered after July 11, 1988, including:

New Construction, Acquisition or Rehab of Single Family Dwellings. Single family dwellings assisted with Federal funds must be made handicap accessible upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective NYS CDBG buyer. All handicap accessible dwelling units must be distributed throughout the housing project and the sites made available in a range of sizes and amenities. Generally, historic properties must be made accessible unless doing so would substantially impair the significant historic features of the property or result in an undue financial or administrative burden.

New Construction or Substantial Rehab of Multi-Family Dwelling Units. In addition to the ADA requirements, residential structures (other than privately owned residential structures) are subject to requirements of the Architectural Barriers Act of 1968 [24 CFR Part 40]. Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the Uniform Federal Accessibility Standards outlined in Appendix A of 24 CFR Part 40.

Complaint Procedures

Persons who believe they have been discriminated against with regard to provisions of the ADA may file a complaint with the Town of Batavia on a form adopted by the Town Board (see attached). The complaint should be submitted to the Town Clerk who will refer the matter to the appropriate department head and the Town Board for review. The department head will consider the specific accommodation or modification requested by the complainant and may propose an alternative accommodation, provided that the Town can show that the alternative is equally effective. Department heads are encouraged to meet with the complainant to review possible accommodations and negotiate a mutually agreeable resolution of the complaint.

The complainant must be notified in writing of the Town's proposed response to the complaint, including whether or not the department head had determined that a reasonable accommodation would impose an undue financial or administrative burden on the Town. In the event that the accommodation or modification proposed by the department head is not acceptable to the complainant, the complainant may request a meeting with the Town Board to appeal the decision. In the event that the complainant is unable to reach a satisfactory resolution of the matter with the Town Board, the complainant may pursue other remedies as allowed under the ADA regulations.

All complaints must remain confidential and information pertaining to the complaint cannot be disclosed to any entity except HUD.

Resource Materials

The Town will maintain a file of resource materials on ADA compliance, including this policy statement and the complaint form, and will make these materials available for review at no cost in the Town Clerk's Office. Copies of the reference materials may also be provided upon request, at a cost to the requestor of \$0.25 per page. Copies of the complaint form will be provided at no charge.

The Town will also post this ADA policy statement in the Town Clerk's Office and will publish a notice of the adoption of this policy and the related complaint procedures in the Town's official paper. Such notice shall be published upon adoption of this policy statement and at least once during the implementation of any future NYS CDBG Program.

Town of Batavia
Title II of the Americans with Disabilities Act
Section 504 of the Rehabilitation Act of 1973
Discrimination Complaint Form

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the Town Clerk's Office, 3833 West Main Street Road, Batavia, NY 14020.

Complainant: _____

Address: _____

City, State and Zip Code: _____

Telephone: Home: _____

_____ Business: _____

Person Discriminated Against:
(if other than the complainant) _____

Address: _____

City, State and Zip Code _____

Telephone: Home: _____

_____ Business: _____

When did the discrimination occur? Date: _____

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (attach additional pages if necessary):

Is there a reasonable accommodation that may be made to resolve this issue?

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For Town Use Only:

Date received: _____

Referred to: _____

Response: _____

ADA Compliance Notice

The Town of Batavia has adopted a policy statement and complaint procedures to comply with the provisions of Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973.

Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 require that municipalities take affirmative steps to ensure that their federally funded programs and activities are accessible to handicapped and disabled persons.

Persons who feel they have been victims of discrimination under Title II of the ADA and/or Section 504 of the Rehabilitation Act of 1973 may file a complaint by contacting the Town Clerk. Copies of the policy statement, complaint form or other related resource materials may also be reviewed at the Town Clerk's Office.