

1 [ADA Grievance Procedure]

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3 **Ordinance adopting an ADA Grievance Procedure that includes oversight by the**
4 **Mayor's Office on Disability, time limits for filing and resolving grievances,**
5 **investigation by the relevant City department, an appeal process, and an annual report**
6 **to the Mayor and the Board.**

7 Note: Additions are *single-underline italics Times New Roman*;
8 deletions are *strikethrough italics Times New Roman*.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Administrative Code is hereby amended by adding
12 Section 2A.22.2, to read as follows:

13 Sec. 2A.22.2. AMERICANS WITH DISABILITIES ACT GRIEVANCE
14 PROCEDURE

15 (a) **Purpose.** It is the policy of the City and County of San Francisco ("City") not to
16 discriminate against people with disabilities, and to ensure that people with disabilities are not
17 discouraged from participation in or denied the benefits of City services, programs, or
18 activities. To further this policy, the City adopts this Grievance Procedure to provide prompt
19 and equitable resolution of complaints alleging that the City, its officials, employees, or
20 contractors are in violation of Title II of the Americans with Disabilities Act ("ADA"). Title II of
21 the ADA bars state and local governments from discriminating on the basis of disability in their
22 programs, services or activities.

23 (b) **The Role of the Mayor's Office on Disability.** The Mayor's Office on Disability
24 ("MOD") is the responsible entity for coordinating operation of the City's Grievance Procedure.
25 Its duties in that role are as follows:

1 (1) Tracking Complaints. As set forth more fully below, through the transmission of
2 relevant documents, City departments must alert MOD to the filing of a complaint under the
3 Grievance Procedure, apprise MOD periodically of the status of the complaint, and inform
4 MOD of the resolution of the complaint. MOD shall use the records provided by City
5 departments to track individual complaints and ensure that they are fully and expeditiously
6 resolved.

7 (2) Annual Report. MOD shall also utilize documents provided by City departments to
8 prepare and issue an annual report to the Mayor and the Board of Supervisors within a year of
9 the effective date of this ordinance, and annually thereafter, summarizing information about
10 ADA complaints received in the past year by type (i.e. structural access, communication
11 access, or programmatic access), responsible department, and resolution at the initial and
12 appellate levels. The report shall note systemic trends and recommend actions for the City to
13 improve its compliance with the ADA. The annual reports shall also include the results of
14 random "spot check" interviews with complainants to obtain feedback on the efficacy and
15 fairness of the City's ADA Grievance Procedure. MOD shall ensure that the annual reports
16 are available for public inspection.

17 (3) Ombudsperson. MOD shall perform the duties of the City's ADA Ombudsperson.
18 At any point in the grievance process, the complainant may request assistance from the ADA
19 Ombudsperson through MOD. Within three business days of receipt of such a request, MOD
20 shall assign the ADA Ombudsperson to assist the complainant through the complaint
21 investigation, the complaint resolution, or the appeal process. The ADA Ombudsperson shall
22 help the complainant understand how the ADA Grievance Procedure works, assist the
23 complainant in gathering evidence, keep the complainant apprised of the status of his or her
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1 complaint, assist the complainant to participate in the grievance process, and act as a
2 resource for both the complainant and the City to facilitate the resolution of the complaint.

3 (4) Training. MOD shall provide an annual training on the ADA to all personnel with
4 ADA grievance duties (including intake, investigation, and resolution). Such training shall
5 include both technical information regarding the ADA, as well as disability sensitivity training.
6 MOD shall develop an ADA Training Opt-Out Exam for City staff who have successfully
7 completed a previous ADA Training and wish to test out of the annual training requirement.

8 (5) Disability Rights Panel. MOD shall select from among ADA experts in the Bay
9 Area a group of individuals to serve on a panel whose members, individually, and on an as-
10 needed basis, will assist the City in resolving appeals under its ADA Grievance Procedure.

11 (6) Grievance Procedure Brochure. To ensure that the public understands how to file
12 a complaint regarding the accessibility of City programs, services or activities, MOD shall
13 prepare an "ADA Grievance Procedure Brochure," which shall fully explain the process. MOD
14 shall post the Brochure on its website, and shall distribute the Brochure to all City
15 departments and to community organizations and other entities that can assist the City in
16 informing persons with disabilities about the ADA Grievance Procedure.

17 (7) ADA Grievance Form. MOD shall prepare and distribute to all City departments an
18 ADA Grievance Form for use by complainants who wish to file ADA complaints through the
19 City's Grievance Procedure. MOD shall post the Grievance Form on its website.

20 (c) **Filing Process.** The process for filing a complaint under this Grievance
21 Procedure is as follows:

22 (1) Who may file a complaint. An individual who believes that he or she or a specific
23 class of individuals has been subjected to discrimination on the basis of disability by the City,
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1 its officials, employees or contractors may, by himself or herself or by an authorized
2 representative, file a complaint.

3 (2) Time limit for filing a complaint. Complaints must be filed within 180 calendar days
4 of the alleged violation. However, complainants are encouraged to file complaints as quickly
5 as possible to maximize the accuracy of complaint investigations and facilitate prompt
6 resolution of disability rights violations.

7 (3) Where to file a complaint. Complaints should be filed with the ADA Coordinator of
8 the City department responsible for the alleged violation. If the complainant does not know
9 which City department is responsible for the alleged violation, the complainant may file the
10 complaint with MOD. MOD will then forward the complaint to the appropriate City department
11 for investigation and resolution with MOD support and oversight as needed.

12 (4) How to file a complaint. Complaints shall be filed in writing, or in a format that will
13 accommodate the complainant's disability. For example, a complainant may file a complaint
14 by telephone, or a complainant may come in person and ask department staff to assist in
15 filling out an ADA Grievance Form. To ensure accuracy, complaints taken by telephone shall
16 be mailed to the complainant to review, correct as necessary, sign, and return to the City.
17 Complainants are encouraged (but not required) to use the ADA Grievance Form.
18 Complainants may request the form from any City department or from MOD, or may download
19 the form from MOD's website.

20 (5) Content of complaint. Complaints must contain the following information:

21 (A) Name, address, and telephone number or email address of the complainant or the
22 complainant's representative. If the complainant cannot provide an address, then a contact
23 person or other method of contacting the complainant must be provided.

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1 (B) A brief description of the alleged violation, and as much of the following information
2 as is known:

- 3 (i) the date and time it occurred;
- 4 (ii) the place it occurred;
- 5 (iii) the persons responsible and their contact information;
- 6 (iv) witnesses and their contact information.

7 (C) Supporting evidence (if available) such as photographs, letters, written policies or
8 documents.

9 (D) A proposed resolution to the complaint (if known).

10 (6) Acknowledgement Letter. Within four business days of receipt of a signed
11 complaint, the City department against whom the complaint is made shall send the
12 complainant a letter acknowledging receipt of the complaint and include a copy of the
13 complaint and an ADA Grievance Procedure Brochure. The acknowledgement letter will
14 include the name and contact information of the person who will investigate the complaint.

15 (d) **Complaint Investigation.** Each City department shall decide whether to
16 conduct its own ADA grievance investigations or delegate the task to MOD. A City
17 department that opts to delegate its ADA grievance investigations to MOD shall ensure that
18 adequate funding is transferred from the department to MOD for this purpose, via a Work
19 Order, at the beginning of each fiscal year. City departments that delegate investigation of
20 complaints to MOD must cooperate with MOD to resolve the complaints. City departments
21 that choose to conduct their own ADA grievance investigations shall assign this duty to their
22 ADA Coordinator.

23 (e) **Proposed Resolution.** Within 15 business days of receipt of a signed
24 complaint, the City staff person assigned to investigate the complaint shall conduct an
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1 investigation and issue and sign a Letter of Findings and Proposed Resolution to the
2 complainant. If the City department responsible for the alleged ADA violation conducts its
3 own investigation, the department's ADA Coordinator shall sign the Letter of Findings and
4 Proposed Resolution. If the responsible department has delegated its ADA grievance
5 investigation to MOD, both the MOD staff person who conducted the investigation, and the
6 head of the responsible City department shall sign the Letter of Findings and Proposed
7 Resolution.

8 (1) Tolling. The 15-business-day deadline will be tolled when attempts to contact the
9 complainant are unsuccessful and information from the complainant is required before the
10 investigation can commence or be completed. The complaint investigator shall attempt to
11 contact the complainant for three weeks -- at least twice a week by phone and once a week
12 by letter. If the complainant cannot be reached after three weeks, the investigator may close
13 the case without prejudice, and shall issue a final letter to this effect to the complainant. The
14 City staff person conducting the investigation shall sign the letter.

15 (2) Extension of Time. In extenuating circumstances, the ADA Coordinator or MOD
16 shall have an additional 20 business days to complete the complaint investigation and issue a
17 Letter of Findings and Proposed Resolution to the complainant. In this event the ADA
18 Coordinator or MOD shall send the complainant a Notice of Continuing Investigation within 15
19 business days of receipt of a signed complaint. This notice shall explain the reasons for the
20 delay and inform the complainant that the Letter of Findings and Proposed Resolution will be
21 issued no later than 35 business days from receipt of the signed complaint. Extenuating
22 circumstances exist when the complaint raises complex or novel access issues, when
23 complaint investigation and/or resolution involves more than one City department and inter-
24 departmental coordination is impossible to schedule within 15 business days, or when key

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1 personnel (such as the responsible ADA Coordinator) is unavailable due to illness or vacation
2 for 3 or more business days during the 15 business day investigation timeline.

3 (3) Consultation. The ADA Coordinator is encouraged to consult with MOD through
4 the ADA Ombudsperson in conducting the investigation and devising a proposed resolution to
5 the complaint. When the proposed resolution involves solutions that cannot be promptly
6 implemented, such as structural modifications to buildings, the Proposed Resolution shall
7 include a timetable that clearly describes when implementation will occur, and briefly explains
8 the reasons for the time required for each step in the implementation timetable.

9 (f) **Complainant Input and Resolution** . The Letter of Findings and Proposed
10 Resolution shall state that the complainant will have 15 business days from the date of the
11 Letter to comment on the Proposed Resolution in writing, by telephone, or in another format
12 that accommodates the complainant's disability. The Letter shall state that if no comments
13 are received by that time, the Proposed Resolution shall become the Resolution. If no
14 comments are received, the City staff person conducting the investigation shall send a notice
15 to the complainant stating that the comment period has expired and that the Proposed
16 Resolution is now the Resolution. The notice shall also inform the complainant of his or her
17 right to request an appeal from the Resolution.

18 If timely comments are received, the ADA Coordinator or MOD shall have 5 business
19 days from receipt of comments to issue a Resolution, which shall include an explanation of
20 why the complainant's comments were or were not incorporated into the Resolution. The
21 Resolution shall also inform the complainant of his or her right to request an appeal.

22 (g) **Appeal Process**. The process for filing an appeal from a Resolution is as
23 follows:
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1 (1) Time for Filing Appeal. If the Complainant is dissatisfied with the Resolution, the
2 Complainant shall have 20 business days from the issuance of the Resolution to file an
3 appeal. Complainants should send appeal requests to MOD. If a City department receives
4 such a request, the department shall forward it immediately to MOD.

5 (2) Appeal Panel. A three-person panel, selected by the Director of MOD, shall decide
6 the appeal. The panel shall consist of an employee of MOD, an ADA Coordinator from a City
7 department that is, to the greatest extent possible, similar in size or function to the City
8 department responsible for the alleged violation, and a member of the Disability Rights Panel.

9 To ensure that the appeal reflects an independent appraisal, no individual shall be a
10 member of the appeals panel if he or she has had any involvement in the investigation or
11 resolution of the complaint at issue prior to the request for appeal. If there is no MOD
12 employee available who fits this criterion, the Director of MOD shall appoint a second member
13 of the Disability Rights Panel to sit as the third member of the appeal panel. I

14 (3) Appeal Hearing. The appeal panel will convene a hearing to receive testimony
15 from the complainant or his or her representative, the City staff person who conducted the
16 complaint investigation, and the City's ADA Ombudsperson (if needed). Each side shall be
17 allowed to make a brief presentation and will be expected to answer questions from the
18 appeal panel.

19 The appeal panel may conduct additional investigation to the extent it sees fit, and shall
20 issue a Final Decision Letter signed by all members of the appeal panel to the complainant
21 within 20 business days of receipt of the request for appeal. If a member of the appeal panel
22 disagrees with the majority decision, the Final Decision Letter shall include the dissenting
23 member's opinion.

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1 (h) **Tracking Complaints and Record Keeping.** Within four business days of
2 receipt of an ADA complaint, the responsible City department shall send MOD a copy of the
3 complaint. Thereafter, the ADA Coordinator shall send copies of the Letter of Findings and
4 Proposed Resolution, complainant comments, and the Resolution, as each is generated or
5 received, to MOD. Both the responsible City department and MOD shall keep all such
6 documents for five years from the date of the complaint.

7 (i) **Publicity.** Each City department shall include information about the ADA
8 Grievance Procedure in its publications, including the information on its website, and shall
9 make other reasonable efforts to ensure that the public is aware that complaints of violation of
10 Title II of the ADA will be promptly and fairly resolved.

11 (j) **Retaliation.** Retaliation, coercion, intimidation, threat, interference, or
12 harassment for the filing of an ADA complaint, or to restrain a complainant from filing an ADA
13 complaint, is illegal and any City employee who has knowledge of such conduct shall report it
14 immediately to the ADA Coordinator of the responsible City department or to MOD.

15 (k) **Alternate Remedies.** The City does not intend to require complainants to utilize
16 this Grievance Procedure prior to resorting to other administrative or judicial remedies that
17 may be available under the ADA.

18 (l) **Statement of General Welfare.** In undertaking the enforcement of this
19 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
20 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
21 is liable in money damages to any person who claims that such breach proximately caused
22 injury.

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24 APPROVED AS TO FORM:
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DENNIS J. HERRERA, City Attorney

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By: _____
Mariam M. Morley
Deputy City Attorney