

# **AMERICANS WITH DISABILITIES ACT ACCESS AUDIT AND TRANSITION PLAN UPDATE**

## **REPORT TO ST. CHARLES PARK DISTRICT**

### **FINAL REPORT: SUMMARY AND RECOMMENDATIONS**

**September 17, 2021**

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**PROJECT SCOPE OF WORK**

The St. Charles Park District must maintain existing sites so they are accessible to and usable by people with disabilities. The District must also assure that new sites, additions, and alterations fully comply with the 2018 Illinois Accessibility Code and the federal 2010 Standards for Accessible Design.

In 2012, the District retained our firm to conduct an access audit of all sites, and develop a transition plan. A transition plan is a schedule of retrofits at existing sites. In 2021, the District retained our firm again, to audit assets or improvements at 21 Park District sites, and provide a

transition plan update. This was necessary because the District has added sites and elements for public use, since our work in 2012.

## **INTRODUCTION AND THE ADA MANDATES**

The accessibility of St. Charles Park District sites is mandated by federal requirements. This report is a review of our work, and a discussion regarding the mandates of the Americans with Disabilities Act (ADA). The detail, and recommendations, are in the site reports. The site reports include recommendations which meet the federal and state requirements and incorporate smart practices.

The District cannot implement all of our recommendations at once; no local government can do so. We suggest a phased approach to retrofits. It is important that St. Charles Park District staffs gain a good understanding of the findings and recommendations. We suggest a step-by-step approach, as described in the following pages.

We start though with a review of the requirements of the ADA, and how those apply to District facilities and parks. This portion also identifies some tasks that remain to be completed by the District.

### **What are the Americans with Disabilities Act (ADA) General Mandates?**

The [Americans with Disabilities Act](#) (ADA) is a comprehensive federal civil rights law. It prohibits discrimination on the basis of disability. It became effective on January 26, 1992, and has been amended by Congress only once, by a statute adopted in 2008. The ADA has three principal chapters or titles. Title II applies to the St. Charles Park District and the approximately 89,000 other units of state and local government across the country, and it requires the District to make parks, facilities, policies, communications, and programs, accessible to and usable by people with disabilities. Other portions of the ADA prohibit discrimination by employers (title I), as well as businesses and nonprofits (title III).

The subject of this report is St. Charles Park District parks and facilities. As with any statute, there is some overlap. A space used principally by District employees that might be visited by a member of the public is not solely an employee space, and must have a level of accessibility for that visitor if he or she has a disability. The District may also have relationships with nonprofits or other entities, and when an entity uses or benefits from the use of District property or resources and discriminates on the basis of disability, that poses problems for the District as it is strictly prohibited from supporting an entity that discriminates on the basis of disability.

The ADA is to be broadly interpreted. In this section of the final report, we will define terms as they are defined by the ADA. In the remainder of this section, we will review:

- the ADA administrative requirements for the District
- the ways in which the ADA applies to new design and construction
- the ADA requirements for existing facilities
- the ADA Transition Plan requirement
- the ADA requirements for District public facing policies
- the ADA requirements for St. Charles Park District programs, and
- the ADA requirements for St. Charles Park District communications.

Finally, this section concludes with a review of the limitations on the accessibility requirements, including technical infeasibility and the concepts of undue burden.

### **What Are the ADA Administrative Requirements?**

The US Department of Justice (DOJ) published the title II implementing regulation in 1991, and it became effective on January 26, 1992. It has been amended once, and those changes became effective March 15, 2011. The DOJ title II regulation is [here](#).

The St. Charles Park District faces many administrative requirements under title II of the ADA. In this section of the report, we will review five key administrative requirements.

**35.106 Notice Requirement:** The District must make its citizens aware of the “...protections against discrimination assured them...” by the ADA. In doing so, the District must provide information about how parks, facilities, programs, policies, and communications are affected by the ADA. We recommend the District do so in a way that is inviting and appealing, and consistent with the way in which the District communicates with members of other protected classes.

**35.107(a) Designation of Responsible Employee:** The District must appoint at least one employee “...to coordinate its efforts to comply with and carry out...” its obligations under the ADA. Known as the ADA Coordinator, this employee is responsible for investigating complaints regarding noncompliance, and coordination of overall ADA implementation. The website does not identify an ADA Coordinator, and this should be addressed by the District.

**35.107(b) Complaint Procedure:** The District must have a process by which disputes regarding accessibility at sites, effective communications, and inclusion in programs and services can result in “...prompt and effective resolution...”. DOJ refers to this as a “grievance procedure”. We recommend a different approach here. Naming it a complaint process or grievance process gives it the appearance of an adversarial process. It need not be, and in fact, many believe that a more positive approach yields “prompt and effective resolution” in a much more customer-friendly way. We suggest the District consider naming the process the Access and Inclusion Solutions Process, or some other appropriate name that is inviting, not adversarial.

**35.130(b)(7) Make Reasonable Modifications:** The District must make reasonable modifications itself or through FVSRA that enable access to programs and facilities, when so requested by a person with a disability, unless doing so creates an undue burden. The statute and the DOJ regulation identify many actions or devices that are a reasonable modification. In addition, court decisions and DOJ settlement agreements help further define the term and the limits on the concept of reasonable modification. The DOJ ADA website is a good source of information on this subject at [www.ada.gov](http://www.ada.gov).

**35.150(a)(3) Writing Requirement:** The District, whenever it denies a request for a reasonable modification, must create a writing. This is a mandate once it is determined by District staff that a request would create an undue burden (see page 11 of this report). Importantly, the writing is to be signed by “...the head of the entity or his or her designee...”. In making this decision, the entity is to consider “...all resources available for use in the

funding and operation of the service, program, or activity...”. We recommend that the Board of Commissioners delegate this authority to the Executive Director, and that she delegate it to department heads or FVSRA or both. We also recommend that these writings produced by the District be kept together for ease of access and analysis. These will have great risk management value and will help greatly in forecasting the types of requests the District will receive.

### **What Are the ADA Requirements for New Design and Construction?**

Many of the ADA requirements are open to some interpretation regarding compliance. There is, however, one set of requirements that is clear: all St. Charles Park District new design and construction must comply with the federal [2010 Standards for Accessible Design](#) and any State of Illinois requirements that are more stringent from an access perspective. The [2018 Illinois Accessibility Code](#) includes a broader range of assets and is therefore to guide District plans. The DOJ regulation at section 35.151 establishes this requirement, and permits a variance only when it is “structurally impracticable” to fully comply with the Standards.

Experts estimate that design and construction for ADA compliance adds not more than 1% to the facility cost. For the District, it is critical that all designers and contractors understand this mandate and comply with this mandate. Plan review and effective project management by District staff assure that plans and ongoing construction are compliant. The investment of human resources towards this goal is much less costly than removing barriers after a park or facility has been constructed.

New design and construction includes alterations and additions, therefore alterations and additions must adhere to the 2010 Standards. The DOJ title II regulation, at 35.151(b)(4), establishes a requirement that when alterations or additions occur at an existing St. Charles Park District facility, that a “path of travel” is required to connect the accessible elements of the existing facility with accessible elements in the altered area or addition. In preparing the regulation, DOJ recognized the inequity of a result whereby the accessibility portion of an alteration or addition, the path of travel, could require more fiscal resources than the alteration or addition. The regulation therefore introduces the concept of disproportionality, which permits the District to limit path of travel costs to 20% of the cost of a project

Three clarifications are necessary regarding the concept of disproportionality.

First, the District may elect to apply the concept of disproportionality; it is not required to do so. If the District wishes to make the cap 30% of the cost of the alteration or addition, it may do so. The ADA sets the floor, not the ceiling.

Second, the path of travel must be applied when the alteration or addition is to a primary function area. A primary function area is “...a major activity for which the facility is intended.” Examples in the title II regulation include “...the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.” We would add other examples, pertinent to St. Charles Park District facilities. These include, but are not limited to:

- Playground surfaces and playground components at District playgrounds; and
- Spectator seating and player seating at District softball and baseball fields.

Third, some work at an alteration or addition is simply maintenance and the cost of that work may be deducted from the determination of the cost of the alteration or addition, thereby affecting the amount necessary to meet the 20% disproportionality test. At most sites these non-alteration costs are very small. In a world where every St. Charles Park District penny counts, it is appropriate to properly apply the concept of disproportionality.

Access requirements for new design and construction are important in the context of the St. Charles Park District Capital Improvement Plan (CIP). It is critical that CIP project designers and contractors meet or exceed federal and state requirements.

### **What Are the ADA Requirements for Existing Facilities?**

The title II requirements for existing facilities begin with a requirement that the **programs** within those facilities and sites are what is to be made accessible. DOJ title II at 35.149 clearly states that "...no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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."

The term "program" is to be broadly interpreted. For the St. Charles Park District, a program is the opportunity made available to the public. Golf is a program. Making public comment at a Board of Commissioners meeting is a program. Sports fields are a program. Playgrounds are a program. Having picnic tables in a park is a program. Staffing and conducting recreation activities during the summer or afterschool is a program. And yes, the paddleboat is a program.

Think broadly here, and understand that a program is not just an organized activity for which one registers and participates. In applying 35.149, it is a violation of the ADA if a District program cannot be accessed by a person with a disability because the facility in which the program is located is inaccessible.

Title II at 35.150 discusses the parameters for making existing facilities accessible. It requires the District to view that program "...in its entirety..." at 35.150(a). This is interpreted to mean that all of the locations of a program, e.g., every St. Charles Park District playground, must be viewed before determining which will be made accessible and which will be left as is until next altered or replaced. This latter statement is made clear at 35.150(a)(1), where the District is told by DOJ that these requirements do not "...necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities...".

Making a program accessible does not always require making a facility accessible. This is explained by DOJ at title II 35.150(b), where it reviews some of the methods to make a program accessible. The non-structural methods, include, but are not limited to:

- Relocating a program from an inaccessible site to a site that is accessible;
- Providing a program at two or more sites, one of which is not accessible and at least one of which is accessible;
- Redesign or acquisition of equipment to make program participation possible;

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- Bringing the program to the person with a disability by making home visits;
- Construction of new accessible facilities to house the program; and
- Providing extra staff to facilitate interaction by program beneficiaries.

Elsewhere in title II, the District is required to make changes to rules and policies as well. These nonstructural alternatives may be effective in making a program accessible. However, when nonstructural alternatives are not effective in making the program accessible, 35.150(b) requires the District to make alterations to existing parks, facilities, and assets, and when doing so, to treat the alteration as new work and comply with title II 35.151. The District must also give the highest priority "...to those methods that offer services, programs, and activities...in the most integrated setting appropriate". This mandate is discussed elsewhere in this report. Additionally, the District must disperse the accessible programs that are to be retrofit. For example, all accessible playgrounds cannot be located in one quadrant of the District.

The 2011 title II regulation amendments introduced the concept of safe harbor for the St. Charles Park District and other states and local governments at 35.150(b)(2). In essence, if the District in designing and constructing an asset, prior to March 15, 2012, complied with the 1991 Standards for Accessible Design, it cannot be penalized if the Standards change at a later date.

An example of safe harbor is the reach range requirement. In the 1991 Standards, reach range could be as high as 54" above the finished floor (aff) if a side approach was used, and only 48" aff if a forward approach was used. In the 2010 Standards, because of confusion about forward reach and side reach, the maximum reach range was simply reduced to 48" aff. The safe harbor concept applies here, and at St. Charles Park District facilities designed and constructed before March 15, 2012, where a proper side reach can be used, an operating mechanism can be as high as 54" aff. However, if that hypothetical operating mechanism is at 55" aff, it failed to meet the 1991 Standards and must be retrofit to meet the 2010 Standards maximum of 48" aff.

It is important to note that many District assets were not addressed by the 1991 Standards, and were only addressed later in the 2010 Standards. That includes District playgrounds, sports fields, sports courts, and fitness facilities, to name a few. As such, the concept of safe harbor cannot apply to these assets, and the program access test reviewed earlier in this section applies. As an example, playgrounds, but not necessarily all playgrounds, must be accessible. See our discussion regarding the transition plan for more detail.

### **What is the ADA Transition Plan Requirement?**

The title II regulation, at 35.150(c) and 35.150(d), make clear the Transition Plan requirements. A transition plan is a phased order of retrofit for all existing parks and facilities. At 35.150(d), the requirements are:

- Describe the deficits at every District asset;
- Describe a solution for each deficit, or if it is to be left as is, describe why (see page 8 of this report);

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- Specify the year or by what date in which the retrofit will occur; and
- Name the District official responsible for assuring compliance.

No St. Charles Park District plan can be effective, however, without cost references or estimates. In developing the Transition Plan, the District has received cost references for planning purposes to enable effective planning for the retrofits that will occur.

A key issue for the St. Charles Park District is understanding guidance as to by what date all retrofits must be completed. The title II regulation, at 35.150(c), discussing the time period for compliance, offers this guidance:

“Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.”

To suggest that this is not helpful guidance to the District is an understatement, for several reasons. First, it would be literally impossible for the District to have, in 1992, made all of the necessary retrofits by January 26, 1995. In fact, it would be literally impossible for the District to make all retrofits that are necessary during any three-year period. Second, when the title II regulation was amended by DOJ and made effective March 15, 2011, this language was not updated with a new compliance date. Third, when the 2010 Standards were published and included for the first time certain types of recreation assets, there was no change to the completion date of 1995.

The District can draw guidance from the statement above by acknowledging that retrofits will occur as soon as is possible. This requires a balancing of District resources, integration of Transition Plan retrofits with CIP activity, and making Transition Plan work a higher priority than discretionary development and acquisition.

Regarding parks and facilities, there is other guidance by DOJ. If there is only one of a type of asset it must be made accessible. If there are numerous assets of the same or similar type, such as playgrounds and sports fields, not necessarily all must be made accessible (see page 8 of this report). When the issue of recurring assets arises, DOJ does not specify a ratio or percentage that must be accessible. Our work in preparing transition plan recommendations relies on making a minimum of one of every three recurring assets accessible, and dispersing accessible assets throughout the District. This assures that no matter where a resident is, some District assets are near him or her and are accessible.

Lastly, title II at 35.150(d)(a) requires the District to provide an opportunity for the public to participate in the development of the transition plan. The District conducted a feedback session on August 10, 2021. This is discussed in more detail later in this report.

### **What Are the ADA Requirements for St. Charles Park District Communications?**

The title II regulation, at 35.160, requires that St. Charles Park District communications to the public with disabilities must be “as effective” as communications to those without disabilities.

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People with certain health conditions such as deafness or impaired vision may not be able to ascertain the message within the communication. People with a cognitive impairment may not understand the message. People with physical disabilities that limit their ability to use a mouse may not be able to get the cursor to the content on the website.

More and more local governments were using their websites for communication with the public as well as with employees. Certainly today, in a Covid-19 era, that reliance has only grown.

The broad requirements apply to the District website, letters, contracts, aural communication that might occur at a District Council meeting, emails, phone calls, and more.

**What Are the ADA Limitations? Technical Infeasibility and Undue Burden...**

Title II does impose some restraint on the making of reasonable modifications, removal of architectural barriers, and making communications accessible. DOJ expects that these restraints will be implemented as an exception, rather than the rule.

In the 2010 Standards, technical infeasibility is defined within section 106.5 regarding Defined Terms. The District need not make retrofits when doing so is technically infeasible. Again, recognizing that the ADA sets a floor and not the ceiling, the District can choose to make the retrofit. A retrofit to an existing facility may be deemed as technically infeasible when it meets the condition described below:

“With respect to an alteration of a building or a facility, something that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full and strict compliance with the minimum requirements.”

Title II also defines undue burden. The concept of undue burden typically includes three elements: undue administrative burden, undue economic burden, and fundamental alteration. DOJ requires at 35.130(a)(3) that the District bear the burden of demonstrating that denial of a request by a person with a disability rises to the level of one of these three conditions. Each is cited and discussed below.

**35.150(a)(3) Undue Administrative Burden:** DOJ and the US Congress recognized that there may be circumstances in which a small local government, will find it difficult to administratively obtain the personnel, devices, and processes by which it can make reasonable modifications, or remove barriers. This circumstance will be hard to show in the District. In a densely populated metropolitan area like the Chicago suburbs, some jurisdiction, nonprofit, or business will have addressed and resolved the request related to disability being faced by the St. Charles Park District.

**35.150(a)(3) Undue Financial Burden:** DOJ and the US Congress recognized that there may be circumstances in which a local government will find it difficult to provide the fiscal resources to make a modification or to remove barriers. This circumstance will be hard to show for the District. No other state has a property tax levy usable to fund programs for

people with disabilities and site retrofits at existing facilities. DOJ guidance requires that the entire District budget be considered before claiming Undue Financial Burden.

For example, if a modification for a child with a physical disability will require the creation of a firm and stable accessible route to sports fields, the District must consider operating and capital budget unexpended resources in determining whether it can grant this request for modification. With the levy authority, it will be difficult to show Undue Financial Burden. As an important note, District staff must understand this approach. Often, staff will consider only the budget they control, in making decisions about Undue Financial Burden. That is not the correct approach. If a Park District employee takes a job at another agency, and there are \$10,000 in salary savings due to that departure, it is the burden of the District to show why that \$10,000 could not be allocated to the accessible route example above.

**35.130(b)(7) Fundamental Alteration in Nature of the Service, Program, or Activity:**

DOJ and the Congress recognized that a circumstance may arise where a local government will find it difficult to provide the requested modification based on disability because in doing so the fundamental nature of the service, program, or activity will be changed. As an example, beach volleyball is very popular. However, a person using a wheelchair will be unable to negotiate the sand surface in a beach volleyball court. If he or she requests a modification such as replacing the sand with a hard surface court (wood, asphalt, concrete, etc.), the District could do so, as the engineering is not complex. Were that to happen however, the very nature of sand volleyball would be changed.

These same three concepts apply to St. Charles Park District communications. These must be as effective for people with communication impairments as the District communications for people without disabilities are effective. Language identical to 35.150(a)(3) and 35.130(b)(7) is found at title II 35.164.

***Remaining Tasks Under Title II***

As noted, there is likely some unfinished business under ADA title II requirements. These are:

- a review of public facing policies for title II compliance;
- a review of the way in which requests for inclusion support are received, analyzed, and fulfilled (this involves the District and FVSRA); and
- an evaluation of website compliance.

**A GUIDE TO THIS REPORT**

This project was not an access audit of all sites. It instead audited 21 sites or portions of sites that are new since 2012 or where work had occurred since 2012. As discussed earlier in more detail, the District does **not necessarily have to make every site accessible**. It **does** have to make every program it conducts within its sites accessible.

In this report, we identify some broad solutions, such as refreshing all accessible parking, as a way to address issues identified in the site reports, and as a way for the District to better manage compliance. This gives the District flexibility within its compliance efforts to move

resources so that they are applied with optimal impact. We offer these systemic changes as a complement to a site-by-site approach. The District will determine how to proceed, and many local governments apply a hybrid of a systemic and site-by-site approach.

The scope of our work does not include the design of a solution. Our recommendations are performance based. For example, if a parking stall at the golf course center needs to be made accessible by having the proper striping and signage, we will make that recommendation, and will note the dimensions and sign type. The design of a solution is a task for District staff or contractors.

Access is typically a function of three factors: design, installation or construction, and maintenance. Our individual site reports have all of the detail needed for staff to implement retrofits. There are many ways to solve access problems, and the successful alternative may well be one you define.

## **COMMON ISSUES**

Some common issues arise that complement the site report recommendations. One of these is that ways in which maintenance affects accessibility to playground surfaces and other assets.

### **Maintenance**

The District uses a conscientious staff to maintain its parks and facilities. However, over time, every site yields to wear and tear. The recommendations below describe ways in which attention to maintenance can specifically address some access deficits.

1. **Provide training** to maintenance staffs regarding the features of an accessible route and how to ensure that it remains unobstructed so that park amenities, e.g., garbage cans or signs, are placed adjacent to the accessible route.
2. **Add door closer checks** to park maintenance staff checklists, and record observations on a regular basis. When too much force is required to open a door, adjust the closer.
3. **Purchase some new tools.** The District needs battery-powered 2' digital levels, and tools to measure pounds of force that are designed for this purpose. Do not use 4' digital levels. These tools can be assigned to staff for scheduled spot-checks at doors.
4. **Maintain engineered wood fiber surfaces carefully.** This type of playground surface must have four actions to be considered accessible maintenance. They are:
  - A. Replenishment of lost surface material
  - B. Raking the replenished surface to level
  - C. Wetting the surface, and
  - D. Compacting the surface

### **Changes in Level and Gaps**

The routes and sidewalks that make up the District's network of accessible routes are in fair condition. Wear and tear, settling, weather, and other factors combine to cause changes in

level, and gaps along portions of those accessible routes, making that portion noncompliant and a barrier to many visitors with physical and sensory disabilities. Removing changes in level and gaps has a significant universal design benefit too, as more people with all types of conditions can more easily use District routes, such as staff pushing carts of supplies, parents with kids in strollers, and people using an assistive device such as a wheelchair, Segway, or walker.

5. **Add** change in level of more than .25" **to park maintenance safety checklists** in 2022. This will help identify and correct these problems before they expand. Make or buy pre-measured shims and distribute to employees for their use and ease of measurement.
6. **Add inspections for gaps** of greater than .5" **to park maintenance safety checklists** in 2022. Identify and fill these gaps before they expand. **In the alternative, consider resurfacing segments of deteriorated asphalt routes.**
7. **Eliminate changes in level** by the end of 2025. Using the rationale that the most severe changes in level are the greatest barriers to access, make changes in level of greater than .75" the highest priority. Make changes in level of between .5" and .75" the second priority. Make beveling of changes in level of .25" to .5" the third priority. **Consider acquiring or contracting for a concrete grinder.**
8. **Adopt** a policy about the use of Other Power-Driven Mobility Devices (OPDMD) at District sites, and promote that policy to the general public. Every day, people with limited physical mobility start to use a Segway or similar machines. We have included a sample policy in our deliverables.

**Per the new ADA title II regulation published September 14, 2010, District policies or processes permitting the use of OPDMDs were required as of March 15, 2011.**

These assistive devices provide great benefits to people with disabilities and the sooner the District has a policy in regard to their use the better. The policy could, at a minimum, address times of allowed use (dawn to dusk), speed limits, off-limits areas, status of the user as a person with a disability, and minimum age.

It is important to note that a power driven mobility device is not a wheelchair. That device has a separate definition and is already allowed in facilities and parks. The Department of Justice has a good advisory on this topic. It is [here](#).

### **Obstructed Accessible Routes**

Employees **may** see an accessible route as an empty 36" wide space in which a potted plant or garbage can is a perfect fit. However, that blocks or obstructs the accessible route.

9. **Provide training to park maintenance, recreation, and administration staffs** regarding maintenance of accessible routes in parks and in recreation facilities.

### **Employee Work Areas**

The Park District employs many qualified and skilled full time staff, making parks and recreation services available to residents. The District employs many more on a part-time or seasonal

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basis. The District likely has employees with disabilities and in the future, will have **more** employees with disabilities, in all categories of employment.

It is important to address access to work areas, and both the title II regulation and the work of the Access Board do so. In section 203.9 of the 2010 Standards for Accessible Design, the treatment of employee areas is made clear. Generally, a person with a disability should be able to **approach, enter, and exit** the work area. This is addressed by requirements for accessible routes and accessible means of egress. Other factors are door width, and threshold heights.

Excluded from this exception are several types of common spaces in employee areas. Spaces such as the ones below must meet the access guidelines as they are excluded from the definition of employee-only areas:

- corridors;
- toilet rooms;
- kitchenettes for employee dining use, and
- break rooms.

In short, the key issues are the accessible route, changes in level, doors and entries, and maneuvering space once within the work area. This approach is effective so long as when the District hires an employee with a disability, or a current employee acquires a disability, it will remove architectural barriers in work areas or make other accommodations. The two recommendations below are important for all employees at all District sites.

10. **Address accessibility in the District personnel policies**, and note that, upon request by an employee, the District will make reasonable accommodations, which **may** include the removal of architectural barriers in work spaces.
11. **Require new construction, and alterations or additions** that include employee work areas to be designed and constructed so they are compliant with the 2010 Standards for Accessible Design and the 2018 IAC.

### **Accessible Parking**

The District maintains many public parking spaces. It is common to see barriers in parking, and many are related to the access aisles and others to the parking stall itself. The test for the ratio of accessible stalls to all stalls is per parking lot. See our site reports for details.

12. **Create a parking stall template.** A suggested template is below.

### **Parking Stall Dimensions**

Stalls are a minimum of 8' wide. An adjacent access aisle must also be a minimum of 8' wide. The access aisle must be diagonally striped with **high quality yellow paint**. The access aisle can be shared by two accessible stalls.

The collection of signs must include the US District of Transportation R7-8 standard sign (the blue icon in a wheelchair). Below that must be the statewide fine sign. Unless the District or other jurisdictions within the District have adopted a higher fine by ordinance,

the sign must note the statewide fine. Federal settlement agreements require a third sign, on at least one stall, that says VAN ACCESSIBLE. This stall must be 11' wide with a 5' access aisle. An acceptable alternate is 8' and 8'.

Finally, the bottom edge of the R7-8 sign is a minimum of 60" above the finished grade. We suggest that the signpost be centered at the head of the accessible stall and we suggest that the curb cut and detectable warning run the distance of the access aisle.

**The most common deficit** in accessible parking stalls and access aisles is the slope. The 2018 IAC slope **cannot be more than 2.08% in any direction. This challenging requirement that can take considerable effort to meet.**

### **Connection to the Accessible Route**

The access aisles should connect to an accessible route. The maximum running slope for the accessible route is 5%, and to account for heaving and settling, we recommend 4%. The maximum cross slope is 2%.

### **Passenger Loading Zone**

The loading zone must have an access aisle adjacent and parallel to vehicle pull-up space. The loading zone access aisle must be a minimum of 60" wide and 20' long.

13. In 2020 **implement a plan to correct or refresh every accessible stall** at every District facility. Incorporate this task into other plans that require parking lot repair, restriping, or resurfacing.

### **Running Slope and Cross Slope**

There are many sites with running slopes steeper than permitted. At some sites this was a minimal issue, but at other sites it was a significant variance.

This condition naturally occurs when concrete settles, or when connections between new and old routes are off by fractions of an inch. Cross slope is equally important, as it serves drainage as well as access purposes.

14. **Revise standard specifications and details** so that in new construction and alterations the slope of the AR shall not exceed 1:21, or 4.7%, as opposed to 1:20, or 5%. This allows room for field error.
15. **Revise standard specifications and details** so that in new construction and alterations the ramp slope shall not exceed 1:13, or 7.7%, as opposed to 1:12, or 8.33%.  
  
This allows room for field error. It also makes ramps easier to use for everyone, not just people with disabilities. This universal design approach is also a risk management tool.
16. **Revise standard specifications and details** so that in new construction or alterations the cross slope shall be an integral part of the project and shall not exceed 2% or 1:50.

### **Detectable Warnings**

The US Access Board suspended the detectable warning requirement in the late 1990's, for several years. It was restored in 2002. However, it is not required in the 2010 Standards. **As a smart practice, WT Group recommends the use of detectable warnings.**

The detectable warnings at curbs **that are not compliant** are often a concrete cross-cut, or a grid laid on wet concrete to create a diamond indentation. Over time these should be replaced.

17. As with parking, **develop a template for detectable warnings.**
18. In the same year that parking is refreshed, **implement a plan to correct or refresh every detectable warning** at every curb or crossing at District facilities. If necessary, phase this out over a two or three-year period.
19. Weather greatly affects the life of detectable warnings. We recommend the use of durable, metal plates as opposed to plastic plates.

### **Door Opening Force Requirements**

District buildings have many doors. Many have closer mechanisms. All of these need ongoing maintenance to keep the pounds of force (lbf) necessary to open the door in compliance (5 lbf for interior doors and 8.5 lbf for exterior doors).

However, some of the closers are just old. The wear and tear of 20 or more years erodes the closer effectiveness.

20. **Evaluate and determine the age of door closers.**
21. **Add door closer maintenance checks** to safety checklists in 2022 and for closers with 10 years of service or less, aggressively maintain them for effectiveness.
22. **Purchase and install new door closers** for all exterior doors (with closers 20 years old or more) and 50% of interior doors in 2023 or as soon as is possible.
23. **Purchase and install** new door closers for all remaining interior doors in 2025 or as soon as is possible. A link for door pressure gauges is [here](#).
24. **Consider acquiring, installing, and maintaining** power assisted door openers for District facilities with heavy consumer traffic.

### **Signage**

District signs serve several purposes. First, signs assist wayfinding in large sites. Second, signs identify important permanent elements of facilities, such as restrooms. Third, signs facilitate access by people with vision and physical limitations.

The 2018 IAC treats two types of signs differently. Signs for permanent spaces, such as a bathroom, must be in both Grade 2 Braille and raised lettering. Signs that are directional or

informational only require visual lettering of a certain size. Be certain to incorporate these approaches into signs in buildings and sites operated by the District.

25. **Create a sign template for use by the District** in 2022, and describe where and in what facilities signs will be used. The template could include size of sign, mounting height, mounting location, size of characters, space between characters, contrast between characters and background, icons or symbols used in the signs, District information (name of facility? phone number? main office number?), and more.
26. **Implement signage template and refresh** District signs in 2023.

### **Bathrooms**

Bathrooms are an essential part of a visit to a St. Charles Park District site. Exercise, food and beverage, social activities, and more all rely on one of the oldest designs known to us. Making those facilities accessible is tremendously important.

27. **Develop a bathroom template in 2022.** Confirm it with the State of Illinois. This is a list of criterion for restrooms, not a design template. Be sure to include temporary facilities such as portable toilets in the template. The template should address the toilet, grab bars, items in the stall such as toilet paper and hooks, the stall, operating mechanisms, mirrors, sinks, hand towels, and more.
28. **Include bathroom renovations** at facilities in the St. Charles Park District Capital Improvement Plan.
29. **Consider the use of automatic flush controls.** These have environmental benefits and are also a great way to eliminate some accessibility problems.
30. **In the interim, implement non-structural modifications recommended in each section of this report,** such as lowering mirrors, remounting grab bars, changing the height of toilets and urinals, installing compliant stall hardware, and so forth. These less costly changes on a site-by-site basis will serve your customers well until resources are available to renovate restrooms on a comprehensive scale.
31. **Make at least one portable toilet,** where provided at a site, accessible. This includes a portable toilet placed at a picnic shelter or adjacent to sports fields. These must be accessible and must be served by **an accessible route.**

**The District has sites with portable toilets; this must be addressed. Use our single-user toilet checklist, and require compliance by District vendors.**

### **Alarms**

In existing facilities where an aural or audible fire alarm system is provided, a visual alarm is not required unless the building was constructed after January 26, 1992 or has been upgraded since that same date. If an alarm in an existing facility is audible only, it need not be modified to include a visual alarm unless it is replaced or upgraded in the future.

32. **Determine in 2022** if systems have been upgraded or replaced since 1992.
33. **Develop a plan in 2022** for the installation of aural and visual alarms in renovations.
34. **Retrofit construction that has occurred since 1992** to include aural and visual alarms by the end of 2025.

### **Publications and Online Information**

The use of a site grid in the St. Charles Park District print materials is an important tool for residents and can now be used to communicate about accessibility. Create one to incorporate the access work the District staff completes and indicate in your grid the location of accessible picnic areas and accessible playgrounds.

35. **Update print material parks and facilities** information to reflect District plans regarding access, and to note which sites are accessible or will be made accessible.

The same concepts apply to the District website. Residents use the website more than ever before. Use it to communicate about accessibility projects that are planned by the District.

36. **Update website** information to reflect District plans regarding access, and to note which sites are accessible or will be made accessible.

### **Maintenance Buildings**

Maintenance areas are addressed in specific site reports, and employee areas are addressed earlier in this report. We note earlier that the District can apply a different standard to employee work areas, but employee work areas are not exempted from access requirements.

District maintenance staff should receive training in regard to applying the **approach, enter, and exit** strategy so that they understand the reason for the various requirements.

37. **Train maintenance staff supervisors** in accessibility concepts that are applicable to the maintenance building.
38. **Implement recommendations regarding parking, accessible route, changes in level, gaps, doors, and alarm systems** at the maintenance areas.

### **Unique Sites**

The District has several unique sites, like Swanson Pool, the Paddleboats, and Pottawatomie Community Center. This raises the bar on the expectation of access at these sites, as there is no "alternate" site to which the District can direct patrons with disabilities to, so they can enjoy the "programs" at those sites.

We do note that the Paddleboats, because of their age and design, are not accessible. We believe, however, that changes to those are technically infeasible. We would suggest the District develop emergency evacuation procedures with people with disabilities in mind. This could be complemented by obtaining emergency evacuation devices as well.

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For these sites, efforts must be made annually towards the correction of access deficiencies. This can be done through existing capital plans, or by following our recommendations in the reports for those sites regarding specific retrofit work.

### **PROGRAM ACCESS TEST**

The US DOJ test for existing facilities is known as the “program access test”. A “program” is an opportunity made available by the District. It can be as diverse as eating a sandwich at a picnic table in a park, enjoying a playground at a park, enjoying a walk at Fairview Park, and attending a Board of Commissioners meeting and making public comment. A program is not just an activity for which a person registers and pays a fee.

We note early in this section that the program access test does not apply to new construction or alterations and additions. New construction and alterations and additions must be designed and constructed to comply with the 2010 Standards for Accessible Design and 2018 IAC.

In the title II regulation, section 35.150(b) describes the methods an entity can use to make programs accessible. They include:

- Redesign or acquisition of equipment;
- Reassignment of services to accessible buildings;
- Assignment of aides to program beneficiaries;
- Delivery of services at alternate accessible sites;
- Alteration of existing facilities and construction of new facilities;
- Use of accessible rolling stock or other conveyances; and
- Any other methods that result in making its services, programs, and activities readily accessible to and usable by individuals with disabilities.

Importantly, this section notes that a “...public entity is not required to make structural changes in existing facilities...” when any other method, such as those noted above, are effective. An element of the program access test is dispersion. For example, the Park District owns and operates playgrounds. Those to be made accessible shall be dispersed throughout the District.

What is the right number, or ratio of accessible to inaccessible, for recurring assets? That is an unknown today. US DOJ has not, and likely never will, established a ratio or percentage. We do know that DOJ guidance indicates that unique or infrequently occurring assets are more likely to require alteration than frequently occurring assets. We recommend the District adopt an approach requiring that a minimum of one of three recurring sites be made accessible. Additionally, unique sites shall be made accessible.

The program access test for the St. Charles Park District and other units of state and local government is much more complex than the approach to existing facilities that a business or nonprofit may take. Our approach of one-of-three has been accepted by Federal District

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Courts, the US DOJ, the Department of Interior, state courts, and state enforcement agencies. We know it is an effective approach that allows the Park District to optimize resources and make sites accessible to residents.

The concept of technical infeasibility is an important exception. The US DOJ 2010 Standards for Accessible Design and 2018 IAC note that when meeting the technical requirements, if the movement of a load bearing wall or element is required, technical infeasibility may arise. The Park District need not make alterations at a site when it is technically infeasible to do so. We would suggest that making changes to the paddleboats are likely technically infeasible.

We have applied the program access test in the site reports. We take no position as to whether the District has a number of assets in a category, such as tennis courts, that is adequate to the demand for tennis in the District. That is not within our scope.

## **TRANSITION PLAN**

The District must have a transition plan per 35.150(d) of the DOJ title II regulation. The plan should identify the barrier, the corrective work, the date by which the work will occur (in our reports, the Phase), and the person responsible for barrier removal.

Our scope for this project is different than an entire system-wide approach. We re-audited 21 sites, named below. Our Transition Plan Update is an Excel deliverable, and it includes the 2012 work, as well as updated information from our audits this year.

Barriers should be removed as soon as is possible. Phasing the work to be done allows access to occur and makes the best use of the resources of St. Charles Park District. Each phase requires a different number of years for implementation. The District should determine the annual activity within its fiscal years.

We recommend work in five phases. We also note work we believe need **not** occur in a category titled District Option. Should District plans change, or should other resources become available, the corrective work needed at these sites is known. Finally, we do recommend some work occur as a smart practice.

We have made cost **references for planning purposes** for the corrective work recommended. We note that these are not estimates and should be used only for planning purposes. The final design, the year in which the work will occur, the relationship with the contractor, and many other factors must be considered before a cost estimate is made.

Our total of all cost references for the sites we audited is \$2,054,846.88. Our Excel pivot table shows work in five phases, and the District can choose to reorder those recommendations. Our phasing is described below.

- In Phase One, we recommend work in two categories: easy to do with existing staff and fiscal resources (low-hanging fruit), and work at recently built sites that is not compliant (such as parking). We suggest that completion of this phase requires three fiscal years. Cost references for Phase One are \$570,813.45.

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- In Phase Two, we recommend work in areas that are new to the 2010 Standards. This typically includes sports fields and courts, playgrounds surfaces, playground components, and other park assets. We suggest that completion of this phase requires two fiscal years. Cost references for Phase Two are \$464,486.45.
- In Phase Three, we recommend work in two categories: elements recently added to the 2018 Illinois Accessibility Code, such as picnic areas and trails, and elements where correction is complex or costly. We suggest that completion of this phase requires three fiscal years. Cost references for Phase Three are \$216,719.80.
- In Phase Four, we do phase some work as District Option. This is work at a site or element with access deficits where we believe the District already meets the program access test and need not make these sites accessible, until later altered for another purpose. Cost references for District Option are \$192,733.45.
- In Phase Five, we identify corrections that were most recently added to the 2018 Illinois Accessibility Code. These corrections, we believe, make your services and assets more accessible and usable by individuals with disabilities. Cost references for Phase Four are \$40,700.25.

#### **COMMUNITY ENGAGEMENT**

The ADA does require the District to provide an opportunity for public feedback in the shaping of transition plan priorities. A public feedback session was held the evening of August 6 at Pottawatomie Community Center, but no members of the public attended. The District will post a survey on its website, along with a presentation explaining the project, and seek public feedback on the access preferences and priorities of St. Charles Park District residents.

#### **FUNDING ACCESS RETROFITS**

We have developed this section to discuss some of the potential funding sources other districts, cities, counties, and governmental entities have used for accessibility compliance. This is intended as primer on this topic and is not intended as a comprehensive list.

##### **No Dedicated Federal Source**

There is no dedicated source of federal funds for accessibility renovations to existing sites. This will not likely change in the future. Even if a change were to occur, federal funding is unpredictable, as we have seen from other federal programs.

##### **Earmarks**

Some of our clients have pursued Congressional earmarks for access work. Earmarks are unpopular, and difficult to obtain. While Congressional earmarks were not used for a decade or more, both political parties now support the use of earmarks.

This is an opportunity for the Park District.

### **Community Development Block Grant Funds**

Several of our clients have acquired federal Community Development Block Grant (CDBG) funds for accessibility renovations at existing sites. CDBG funds often have a scale of priority. It is important to establish accessibility as a priority for CDBG applications.

### **State Grants Programs**

Several states, and several of our clients, have successfully pursued state legislation to set aside dedicated state funds that can be used for specific purposes, including access retrofits. To name a few, Illinois, New Jersey, Colorado, Ohio, Florida, and Texas all have sources of revenue funded in various ways, such as a real estate transfer tax.

While the various states have all at times not fully funded these grant programs, they remain an effective tool for cities regarding site acquisition and development.

### **State Discretionary Funds**

Most state legislatures provide some type of discretionary funding for members of the legislature. In some states, these are relatively small grants of under \$50,000. These can be a viable option for a District with good relationships with state legislators.

### **Special Accessibility Legislation**

The District is well aware of the legislation that allows municipalities and park districts to levy a tax that can be used only for recreation for people with disabilities. The three principal uses of these funds are for FVSRA program costs, the cost of recreation inclusion supports, and for costs related to access retrofits at existing sites and facilities.

Statewide, Illinois park districts and villages levy an estimated \$58,000,000 annually for this purpose. No other state has adopted this model.

### **Private Giving**

Some of our clients have successfully sought private gifts for accessibility purposes. The private giving area is subject to fluctuations depending on the economy, political issues, and related fiscal impacts. In our experience, private giving works best when an agency has an employee dedicated to this purpose.

### **Corporate Giving**

Some of our clients have successfully sought grants from corporations. These may, for corporate purposes, come from marketing (such as naming rights to a facility) or from community giving.

Also, many corporations have a related foundation that manages corporate giving. In our experience, corporate giving works best when an agency has an employee dedicated to this purpose.

### **Community Foundations and Other Foundations**

Community foundations, which operate on a regional basis, have also been involved in accessibility giving. Perhaps the greatest example here is the multi-million dollar Kellogg Foundation project that improved accessibility in Michigan, Ohio, Indiana, Illinois, and other states that bordered the Kellogg headquarters in Michigan.

### **Other Methods**

There are many other methods, some of which are crafted by a community to meet a unique set of circumstances. These include:

- A New Jersey community takes 100% of accessible parking fines and applies those towards recreation for people with disabilities.
- Several Illinois park districts have added a \$1 to \$10 surcharge to every registration, with the fees generated being earmarked for access and inclusion expenses.
- Several communities have successfully sought budget increases to address accessibility backlogs, just as they have with maintenance backlogs. Those increases may be general fund allocations, proceeds from successful referenda, or reallocations of under expended funds originally budgeted for other local government purposes.

### **Risk Management**

Investing in safety saves money by avoiding legal expenses related to injuries on District properties. The same concept applies here. Investing in retrofits saves the Park District the cost of staff time and attorneys to defend against ADA lawsuits or administrative complaints.

While we do not believe a decision about access should hinge solely on risk management factors, we do recommend that St. Charles Park District be aware of this factor going forward. ADA enforcement continues to grow and touch more and more communities. Relief under the ADA is intended to be injunctive in nature, but the time consumed and cost of litigation can be a great drain on human and fiscal resources.

### **The General Fund**

Another method is to fund retrofits through the General Fund, Corporate Fund, or CIP. Some of the methods discussed earlier in this section help to reduce General Fund reliance, especially for Illinois park districts like St. Charles Park District that are in a special recreation association. These typically are not a substitute for General Fund support.

## **COORDINATION WITH FVSRA**

The District is one of the partners in the Fox Valley Special Recreation Association (FVSRA), formed in 1976. Because the Park District is a FVSRA partner, it can levy funds through the 5-8 levy, which can only be used by park districts or cities in a special recreation joint agreement. FVSRA has for decades provided high-quality recreation opportunities for St. Charles Park

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District residents with disabilities. The Park District has a seat on the FVSRA Board of Trustees as well.

The therapeutic recreation and parks and recreation professionals at FVSRA can be a great asset to the District. The intergovernmental cooperation model has served park districts well since 1970. There may be ways to create greater efficiency by working on access projects with other FVSRA partner districts and cities. That might include staff and board training, joint purchasing, sharing access tools such as concrete grinders or a rotational penetrometer for the evaluation of playground surface accessibility, and more. While we encourage the exploration of this approach, we acknowledge that ADA compliance is a responsibility of the District.

39. **We recommend that the District** explore ways to gain efficiencies through greater cooperation with FVSRA and its partners.

## CONCLUSION

St. Charles Park District has a variety of facilities and sites. The skilled staff operates facilities and sites the community wants and enjoys. This report identifies some issues that are typical in a parks and recreation infrastructure, and some that are unique to the District.

No one can say how long the District can stretch these projects, so we urge the District to make access retrofits part of all plans and budgets. US Department of Justice officials have said work must be completed as soon as is possible. **Be certain to understand that the District could be forced to accelerate its pace. Making access work a high priority is critical.**



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