

ORDINANCE 20-O-24 amending the Murfreesboro City Code, Chapter 2, Article XIV, by eliminating the Disabled Resident Access Committee and designating responsibility and authority for addressing concerns relating to access to City facilities and services and participation in City activities and functions by individuals with disabilities.

WHEREAS, City Council, in response to the enactment of the Americans with Disabilities Act, adopted Ordinance 92-22 and thereby created a Disabled Resident Access Committee whose primary purpose was to “establish ground rules and procedures for hearing complaints, requests or suggestions from disabled persons regarding access to and participation in public facilities, services, activities and functions in the community”; and

WHEREAS, City Council further modified the role of the Disabled Resident Access Committee with the adoption of Ordinance of 93-O-48; but

WHEREAS, the Disabled Resident Access Committee has not met for more than ten (10) years and has not received any complaints from or on behalf of individuals with disabilities in the community since its last meeting; and

WHEREAS, the City has established alternative administrative procedures and practices for resolving complaints made and addressing concerns raised by or on behalf of individuals with disabilities in the community; and

WHEREAS, the City wishes to reaffirm its commitment to eliminating unlawful discrimination on the basis of disability and ensuring that all its facilities, services, programs, and activities are accessible to qualified individuals with disabilities;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:

SECTION 1. Chapter 2, Article XIV, Disabled Resident Access Committee, of the Murfreesboro City Code is hereby repealed and deleted.

SECTION 2. The Murfreesboro City Code is hereby amended by adoption of a new Chapter 2, Article XIV, as specified below with the sections to be numbered sequentially:

ARTICLE XIV. ACCESS TO CITY FACILITIES, SERVICES, ACTIVITIES AND PROGRAMS BY INDIVIDUALS WITH DISABILITIES; COMPLAINT PROCEDURES

SECTION 2-310 DECLARATION OF POLICY.

(A) The City Council declares that, as a matter of policy, the City is committed to ensuring that no qualified individual with a disability is excluded from participation in or denied the benefit of City programs, services, or activities because of any physical, psychological, or mental disability. To that end, the City shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, except where the modifications would fundamentally alter the nature of the service, program, or activity. In addition, the City shall ensure, except as

otherwise provided by federal law, that no qualified individual with a disability is excluded from participation in or denied the benefit of City programs, services, or activities or otherwise discriminated against because the City's facilities are inaccessible to or unusable by individuals with disabilities. It is the intent of City Council that this Article be interpreted so as to be consistent with Title II of the Americans with Disability Act, including any regulations promulgated by the U.S. Department of Justice implementing Title II then in effect.

- (B) The City Manager shall approve and implement administrative policies and procedures in furtherance of this declaration of policy.

SECTION 2-311 AMERICANS WITH DISABILITIES ACT COMPLAINT PROCEDURES; APPEAL.

- (A) The City shall establish complaint procedures for addressing and resolving complaints by any individual:
- (1) who has requested communication assistance, an auxiliary aid, or removal of a physical barrier or assistance accessing a City facility;
 - (2) who has sought a modification to a City policy, practice, or procedure to avoid discrimination on the basis of disability;
 - (3) who has been excluded from participating in or denied the benefit of a City program, service, or activity because of the individual's current or past disability, because the individual has been regarded as having a disability, or because the individual's relationship or association with someone with a disability; or
 - (4) who otherwise believes to have been the target of disability-based discrimination by a City official, employee, contractor, or sub-recipient of federal funds.
- (B) Complainants shall be offered the opportunity to meet with one of the City's ADA Coordinators to discuss the Complainant's concerns. The ADA Coordinator shall render a decision and communicate such decision in writing to the complainant in accordance with complaint procedures established pursuant to this section.
- (C) If the complainant is dissatisfied with an ADA Coordinator's decision, the complainant may appeal such decision to the City Manager in accordance with the complaint procedures established pursuant to this section, provided, however, that all appeals relating to the removal of a physical barrier or access to a City facility shall be heard by the Construction Board of Adjustments and Appeals.
- (D) The right of the citizen to a prompt and equitable resolution of a complaint shall not be impaired by the citizen's pursuit of other remedies, such as the filing of a complaint with the Department of Justice or other appropriate federal agency, or the filing of a suit in state or federal court. Use of the City's complaint procedure is not a prerequisite to the pursuit of other remedies.

SECTION 3. Chapter 7, Article I, Section 7-16, Construction Board of Adjustments and Appeals, of the Murfreesboro City Code is hereby amended by reassigning the existing subsections (F) through (J) as (G) through (K) respectively, and inserting a new subsection (F), stating as follows:

"(F) Power and authority; complaints pursuant to Americans with Disabilities Act.

- (1) The Board shall also have the authority to hear complaints regarding access to and use of City owned buildings, facilities, services, and events. For purposes hearings conducted pursuant to this subsection, the members of the Board appointed pursuant to subsection (A) shall be joined by two additional members appointed in accordance with subsection (F)(2). Each additional member shall serve as an equal member of the Board in all proceedings conducted pursuant to this subsection, having voice and vote.
- (2) The Mayor shall appoint, subject to confirmation by a majority vote of City Council, two additional members to serve on the Board for the sole purpose of

hearing and resolving complaints filed pursuant to this subsection. These additional members shall be appointed for three-year terms and shall either be an individual with a disability as defined in the Americans with Disabilities Act or an employee of Middle Tennessee State University serving in the University's ADA Compliance Office or the University's Disability and Access Center.

- (3) A person seeking relief from the Board must first file a complaint through the City's ADA Complaint Procedures. If the City fails to respond to the complaint within ten (10) business days or, in the opinion of the complainant, the City fails to address the complainant's concern adequately, in the form of providing a reasonable accommodation, modification of policies, or facilitating physical access to a City building or facility, the complainant may file an appeal with the Board. The appeal must be submitted within 120 days of the City's response or within 120 days from the date the City's response was due. The Board will consider the appeal within twenty (20) days of its being filed with the Chief Building Official. Except as modified by this subsection (F), the Board's consideration of ADA complaints shall be conducted as required by Section 7-16.
- (4) The Board, sitting with the additional two members created by this subsection (F), shall have the power to accept, modify or reverse the City's ADA Co-Ordinator's decision based on the preponderance of the evidence presented by both the complainant and the City."


SECTION 4. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:


1st reading October 22, 2020
2nd reading November 5, 2020


Shane McFarland, Mayor

ATTEST:


Melissa B. Wright
City Recorder

APPROVED AS TO FORM:

DocuSigned by:

Adam F. Tucker
City Attorney

