

# CITY OF OAKLAND

## ADA PROGRAMS DIVISION

Subject: **Service and Assistance Animals Policy**  
Effective Date: August 1, 2017  
Supersedes: N/A  
Responsible Departments: ADA Programs Division

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### I. Policy

The City of Oakland policy welcoming persons with disabilities into all its public programs, activities, services, buildings and facilities is set forth in Administrative Instruction 123, the City ADA (Americans with Disabilities Act) or Disability Policy. This subsidiary policy provides additional guidance regarding the City's responsibilities towards individuals with disabilities who rely on service or other assistance animals for disability-related support while participating in City programs, activities, and services.

Except as modified in Section V., below, individuals with disabilities have the right to be accompanied by their service or other assistance animal, as defined in IV., below, when participating in City programs, activities, and services, and in all City buildings and facilities open to the public, owned or leased, including buildings and facilities managed by third parties containing City-sponsored programs.<sup>1</sup> Additionally, persons who are licensed or otherwise authorized to train service animals, as defined in California Civil Code section 54.1, are allowed access to City programs, activities, and services, and in all City buildings and facilities open to the public, owned or leased, including buildings and facilities managed by third parties containing City-sponsored programs.

Under no circumstances will individuals with disabilities or service animal trainers be assessed a surcharge, deposit, or other fee when taking the measures required by this policy.<sup>2</sup> Individuals with disabilities or service animal trainers can be held liable for any damage done to City buildings or facilities caused by the service or assistance animal, and the animal may be excluded if it cannot be controlled by the handler or is not housebroken. At all times the

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<sup>1</sup> 28 C.F.R. §35.136 (Department of Justice ADA regulations); 49 C.F.R. §27.7(e) and §37.5 (Department of Transportation Rehabilitation Act and ADA Regulations); 24 C.F.R. §100.204 (Housing and Urban Development Fair Housing Act regulations).

<sup>2</sup> 28 C.F.R. §35.136(h); [Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs](#). This includes not applying a pet deposit or other fee that might be imposed on a pet owner, as a service/assistance animal or service animal in training is not a pet. Service and assistance animals and service animals in training are not exempt from local vaccination, licensing, and registration requirements, but a service or assistance animal handler cannot be required to show that the animal is registered specifically as service or assistance animal, even if such local registration is available. [Frequently Asked Questions about Service Animals and the ADA](#). Trainers of service dogs in training may be asked to produce tags showing local registration as a service dog. Cal. Civil Code §54.1(c).

handler is responsible for the care and supervision of the service animal, service animal in training, or assistance animal.<sup>3</sup>

Some City Departments, Bureaus or Divisions are required by existing practices in response to settlement agreements resolving litigation, administrative, or informal complaints, to have specific policies and procedures in place for accommodating individuals with disabilities and their service or assistance animals. These Departments shall ensure that their policies and procedures are reviewed for alignment with AI 123 and this subsidiary Policy, and updated as necessary.

All other Departments shall ensure that procedures are in place to successfully implement this Policy throughout its locations, programs, activities, and services, and that contractors, grantees, and staff are provided training and technical assistance as needed.

## **II. Responsible Parties**

- A. The City Administrator** through the ADA Programs Division is responsible for citywide enforcement of this Policy throughout all City programs, activities, services, and in all of the City's leased or owned buildings and facilities open to the public. The ADA Programs Division is responsible for investigating complaints, providing technical assistance and training support to Departmental Access Coordinators and other staff, contractors, and grantees in implementing this Policy, and updating this Policy as may be needed.
- B. Departmental Access Coordinators** are responsible for understanding the application of this Policy to their set of programs, activities, services, buildings, and facilities, including departmental contractors and grantees, and seeking technical assistance and training as needed for successful implementation.
- C. The Housing and Community Development Department** is responsible for complying with its obligations under the Americans with Disabilities Act (ADA) and Fair Housing Amendments Act (FHAA), as described in this Policy, in the administration of its housing programs including but not limited to Rent Board proceedings, housing developments, and other housing assistance programs.
- D. The Human Services Department** is responsible for complying with its obligations under the ADA, FHAA, and the Department of Transportation (DOT) ADA and Rehabilitation Act regulations, as set forth in this Policy, in the administration of its transit and paratransit programs, shelter programs, and all other programs serving the public.
- E. The Oakland Zoo** is responsible for updating and publishing its policies and practices for accommodating individuals with disabilities who are accompanied by their service animals at the Zoo, and licensed or otherwise authorized trainers accompanied by their

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<sup>3</sup> 28 C.F.R. §35.136(h); [Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs](#).

service animals in training, in accordance with this general Policy, and making reasonable modifications to its programs, activities, and services as needed.

- F. Oakland Animal Services** is responsible for updating and publishing its policies and practices for accommodating volunteers and patrons with disabilities who are accompanied by their service animals, and licensed or otherwise authorized trainers accompanied by their service animals in training, at OAS facilities or events in accordance with this general Policy, and making reasonable modifications to its programs, activities, and services as needed.

### **III. Background**

Administrative Instruction 123, the ADA Policy, sets forth the general requirements for all City programs, activities, and services for compliance with the ADA and related laws protecting the rights of individuals with disabilities to full and equal access to state and local government services. This subsidiary policy consolidates the City's obligations under both the ADA and the Fair Housing Amendments Act (FHAA), as modified by California law, with respect to the treatment of service or assistance animals accompanying persons with disabilities.<sup>4</sup> This Policy is intended to provide additional direction with regard to making accommodations for individuals with disabilities who must rely on service or assistance animals in order to be able to access City programs, activities, or services. This policy also describes the right of service animal trainers to access City programs, activities, and services under California law.

### **IV. Definitions**

- A. **Service Animal**: means any dog, or miniature horse, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether trained or untrained, are not service animals. The work or tasks must be directly related to the individual's disability. Crime deterrence, emotional support, or companionship does not constitute work or tasks under this definition.<sup>5</sup>

With respect to transportation facilities, a service animal may be any animal individually trained to work or perform tasks for an individual with a disability.<sup>6</sup>

- B. **Service Animal in Training**: as defined by the California Civil Code, means any dog that is being individually trained to the requirements of an individual with a disability.<sup>7</sup>

- C. **Assistance Animal**: as defined by HUD, means any animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability.<sup>8</sup> Assistance animals are not subject to training requirements, but may include animals that meet the service animal definition above.

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<sup>4</sup> 28 C.F.R. §35.136; 49 C.F.R. §27.7(e) and §37.5; 24 C.F.R. §100.204.

<sup>5</sup> 28 C.F.R. §35.104.

<sup>6</sup> 49 C.F.R. §37.3.

<sup>7</sup> Cal. Civ. Code §§54.1(b)(6)(C)(iii); 54.1(c).

<sup>8</sup> 28 C.F.R. §35.136(h); [Service Animals and Assistance Animals for People with Disabilities in Housing and](#)

- D. **Reasonable Accommodation**: in housing programs, means is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.<sup>9</sup> For purposes of this policy, as explained in Section V., below, all City housing programs, including residential facilities, shelters, and housing assistance programs are subject to making reasonable accommodations for persons with disabilities and their service or assistance animals.
- E. **Reasonable Modification**: means a change, exception, or adjustment to policies, practices, or procedures that may be necessary for a person with a disability to participate in a City program, activity, or service.<sup>10</sup>
- C. **Fundamental Alteration**: is a change that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered.<sup>11</sup>
- D. **Direct Threat**: means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services.<sup>12</sup>

## V. Procedures

### A. **Access to City Programs, Activities, and Services**

In general, service animals (dogs, and in some circumstances, miniature horses) and service animals in training (dogs only) are permitted to accompany individuals with disabilities or their licensed or otherwise authorized trainer into City leased and owned buildings and facilities, and when participating in City programs, activities, and services, including those administered by third parties.<sup>13</sup>

#### 1. Housing Programs

As per the FHAA, housing programs are required to reasonably accommodate tenants with disabilities who require a modification to existing policies, practices, or procedures in order to enjoy a dwelling based on a disability-related need. This includes modifying a no-pet policy in order to accommodate an assistance animal as defined in Section IV., above, in a City housing facility, shelter, or other type of residential facility. Other types of housing-related programs, such as Rent Board proceedings and other housing assistance programs are also subject to making

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[HUD-Funded Programs.](#)

<sup>9</sup> 24 C.F.R. §100.204.

<sup>10</sup> 28 C.F.R. §35.130(b)(7); 49 C.F.R. §27.7(e) and §37.5.

<sup>11</sup> 42 U.S.C. §12201(f).

<sup>12</sup> 28 C.F.R. §35.104.

<sup>13</sup> 28 C.F.R. §35.136; 28 C.F.R. §35.130(b).

reasonable accommodations for participants to be accompanied by their assistance animals while participating in these programs.<sup>14</sup>

## 2. **Transportation Programs**

Service animals, and service animals in training, as defined in Section IV. above, are permitted on City transportation vehicles and facilities, including vehicles and facilities managed by third parties.

## 3. **Programs, Activities, and Services Involving Other Animals**

In City programs involving other animals, such as the Oakland Zoo and Oakland Animal Services, supplemental policies and procedures shall be established to implement this policy to the fullest extent possible, without fundamentally altering the nature of the programs, activities, and services. Measures to be taken to ensure program integrity may include but is not limited to mapping locations where service animals or service animals in training are restricted to protect the welfare of other animals, and other reasonable modifications that will allow individuals with disabilities and licensed or otherwise authorized trainers to benefit from the program, activity, or service while accompanied by their service animal or service animal in training.<sup>15</sup>

### **B. Verifying a Service Animal, Service Animal in Training, or Assistance Animal**

If it is not readily apparent that an animal is a service animal, service animal in training, or assistance animal, staff may take the following measures in order to verify whether the animal meets the applicable definitions set forth in Section IV, above.

1. **General Programs.** In general program settings, the City is required to allow access to service animals that are dogs, or when circumstances permit, miniature horses, that are individually trained to perform work or a task for the benefit of a person with a disability. Staff may ask the following questions:<sup>16</sup>

- a. Is your dog (or miniature horse) required due to disability?
- b. What work or task has your dog (or miniature horse) been trained to perform?

If there is a concern about whether a particular facility can in fact accommodate a miniature horse, staff may additionally assess the type, size, weight, level of handler control, whether the horse is housebroken, and

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<sup>14</sup> Any established policies and procedures for accommodating service or assistance animals should re-examined in light of this general Policy and AI 123 for full alignment.

<sup>15</sup> *Ibid.*

<sup>16</sup> 28 C.F.R. §35.136(f).

whether there are legitimate safety requirements that would be impacted by the horse's presence at the facility.<sup>17</sup>

Staff are not permitted to ask about the nature of the individual's disability, or seek documentation such as certification, a license, or other proof that the dog or miniature horse is a service animal.<sup>18</sup>

As per California law, the City only permits service animals in training that are dogs to accompany their licensed or otherwise authorized trainers while participating in its programs, activities, and services. Staff may request that the trainer produce a tag to prove that the dog is a service animal in training.<sup>19</sup>

2. **Housing Programs.** In housing programs, as described in V.A., above, the City is required to reasonably accommodate individuals with disabilities who are accompanied by assistance animals, such as by waiving a no-pet policy or pet deposit requirement. In housing programs, assistance animals may be any species and do not have to be individually trained. Staff may ask the following questions and/or request supporting documentation to verify an animal is an assistance animal when the animal's role is not readily apparent:

- a. Do you have a disability?
- b. Is this animal an assistance animal that you require due to your disability?

Staff may not ask for access to medical records or providers, or require detailed or extensive information or documentation of the disability.<sup>20</sup>

3. **Transportation Programs.** In City transportation programs, service animals that are individually trained are permitted access to vehicles and facilities, and are not restricted to dogs. Staff may ask the same questions listed for General Programs in 1., above.

### **C. Grounds for Exclusion**

Every reasonable effort should be made to allow an individual accompanied by a service or assistance animal as defined in this policy to participate in City programs, activities, and services. Efforts shall include reasonably modifying policies, practices, and procedures to avoid conflicts between the presence of a service or assistance animal, and the overall purpose and benefits of the program.

Allergies, or fear of animals among other program participants will not generally be grounds for the exclusion of a service or assistance animal. Staff may make

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<sup>17</sup> 28 C.F.R. §35.136(i).

<sup>18</sup> 28 C.F.R. §35.136(f).

<sup>19</sup> Cal. Civ. Code §54.1(c).

<sup>20</sup> [Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs](#)

program modifications to mitigate the impact on other program participants due to the presence of the animal.

1. **Lack of Control.** A service animal or service animal in training generally may be excluded from accessing City programs, activities, services, buildings, and facilities when the handler is unable to exercise control of the animal, or if the animal is not housebroken<sup>21</sup>. There is no requirement that the service animal be leashed as long as the animal is otherwise under the handler's control. The individual with a disability must be permitted to participate in the service, program, or activity without the service animal on the premises.<sup>22</sup>
2. **Fundamental Alteration.** A service or assistance animal, or service animal in training, may be excluded from a City program, activity, or service if its presence would fundamentally alter the nature of the program, activity, or service.<sup>23</sup> Such circumstances should be rare, and always individually assessed, but might include situations when the presence of the animal may affect the safety or welfare of other animals, such as an exhibit of predatory or endangered animals at the Oakland Zoo, or an adoption event hosted by Oakland Animal Services.
3. **Direct Threat.** As stated above, a service or assistance animal or service animal in training must be under the control of the handler at all times. Before excluding a service or assistance animal or service animal in training based on direct threat, staff must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, of the nature, duration, and severity of the risk of injury, the probability that injury will in fact occur, and whether modifications or the provision of auxiliary aids or services may mitigate the perceived risk. Stereotypes about particular species or breeds cannot form the basis of a finding of direct threat.<sup>24</sup>

Any decision to exclude an alleged service animal, service animal in training, or assistance animal from a City program, activity, or service must be made in writing by the Department Head or designee, as set forth in AI 123, the City ADA Policy.

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<sup>21</sup> Animals that are housebroken can experience illness so accidents can occur; this possibility should be considered before excluding the animal from the premises. Similarly, a dog's limited barking should not serve as evidence alone of being out of control as the barking may be brought under control. [Title II 2010 Guidance and Section By Section Analysis](#), page 87.

<sup>22</sup> 28 C.F.R. §35.136(c).

<sup>23</sup> 42 U.S.C. §12201(f). "At a zoo, service animals can be restricted from areas where the animals on display are the natural prey or natural predators of dogs, where the presence of a dog would be disruptive, causing the displayed animals to behave aggressively or become agitated. They cannot be restricted from other areas of the zoo." [Frequently Asked Questions about Service Animals and the ADA](#).

<sup>24</sup> 28 C.F.R. §35.139.

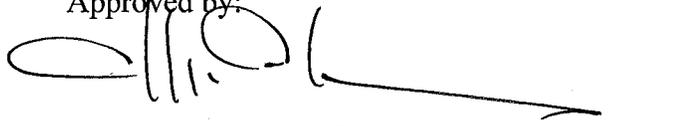
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City ADA Coordinator