

 <p style="text-align: center;"><b>Council</b> <b>Communication</b> Office of the City Manager</p>	<b>Date:</b> March 14, 2011
	<b>Agenda Item No.</b> 29 <b>Roll Call No.</b> [ _____ ] <b>Communication No.</b> <u>11-162</u> <b>Submitted by:</b> Donald M. Tripp <b>Director of Park and Recreation</b>

**AGENDA HEADING:**

Second reading to approve amendments to Municipal Code sections 74-115 (trails); 102-4 and 102-41 (sidewalks); and 102-318 and 102-330 (skywalk system) to permit the use of wheelchairs, manually-powered mobility aids and other power-driven mobility devices for the purpose of locomotion by persons with a mobility disability.

**SYNOPSIS:**

Approving amendments to the Municipal Code to align ordinances with the Department of Justice’s recently-revised Federal Rules implementing the Americans with Disabilities Act (ADA) of 1990. These revisions require the use of wheelchairs, manually-powered mobility aids and other power-driven mobility devices for the purpose of locomotion by persons with a mobility disability be permitted on public ways open for pedestrian use, such as trails, sidewalks and the skywalk system. Municipal Code sections requiring amendment include 74-115 (trails); 102-4 and 102-41 (sidewalks); and 102-318 and 102-330 (skywalk system). The new Federal Rules go into effect on March 15, 2011.

**FISCAL IMPACT:**

Amount: Undetermined cost for new signage (rules will need to be posted).

Funding Source: 2011-2012 CIP, Page Municipal Building-4, ADA Modifications, BLD042.

**ADDITIONAL INFORMATION:**

The revised Rules implementing the ADA were finalized by the Department of Justice (DOJ) on September 15, 2010. These rules will go into effect on March 15, 2011, and will allow “other power-driven mobility devices” to be used by “individuals with mobility disabilities” in any place, indoors or outdoors, that is open to the public, including the City’s multi-use recreational trail system, sidewalks, and the skywalk system. The Rules additionally require that the City “make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities.” The proposed amendments specifically allow the use of wheelchairs, including motorized wheelchairs, manually-powered mobility aids and other power-driven mobility devices in these public pedestrian areas.

The City’s Multi-Use Recreational Trail Ordinance currently allows “motorized devices designed for use by persons with disabilities,” which includes manual and motorized wheelchairs, on the trail system. To comply with the new Federal Rules, Section 74-115 will be revised to not only allow manual and

motorized wheelchairs but also manually-powered mobility aids and “persons with mobility disabilities utilizing or operating a power driven mobility device for the purpose of locomotion.”

The City’s Sidewalk Ordinance and Skywalk Ordinance do not currently prohibit manual or power-driven wheelchairs or manual mobility aids. The proposed amendment will make it clear that these ordinances are in compliance with the revised Federal ADA Rules by specifically providing that manual and motorized wheelchairs, manually-powered mobility aids, and other power-driven mobility devices for the purpose of locomotion are permitted upon City sidewalks and the skywalk system.

An “other power-driven mobility device” is defined in the Federal Rules as: "any mobility device powered by batteries, fuel, or other engines — whether or not designed primarily for use by individuals with mobility disabilities — that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.”

Wheelchairs are defined separately by the ADA and must be allowed to be used anywhere, with no exceptions. A wheelchair is defined as a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion.

The Rules allow anyone who has a mobility disability to use a power-driven mobility device. A public entity may ask a person using an “other power-driven mobility device” to provide a “credible assurance” that the mobility device is required because of the person's disability; however, the public entity may not ask the person about the nature or extent of their disability. That credible assurance may include a valid, State-issued, disability parking placard or card, other State-issued proof of disability, presented by the person to whom it was issued, or a verbal representation, not contradicted by observable fact, that the device is being used for a mobility disability.

The Rules require an entity open to the public to make reasonable modifications in its policies, practices, or procedures to allow the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted. In that case, the entity must complete an assessment of facility, trail, route, or area, and prohibit certain power-driven mobility devices based upon the following assessment factors defined by the DOJ:

- a) The type, size, weight, dimensions, and speed of the device;
- b) The volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- c) The design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors; its square footage; the density and placement of stationary devices; and the availability of storage for the device, if requested by the user);
- d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

If, for example, one of these assessment factors prevents the use of a specific class of a power-driven mobility device in a section of trail or other area where there would be an issue, that device may be denied use. The information about the devices that may not be used must be posted where the public can easily access it before going to that location. The posted information must include the various classes of devices that may be used, rules related to that use, and a contact for more information.

City staff is monitoring the implementation of these new ADA rules, and will be working toward a set of local policies as the need is identified.

**PREVIOUS COUNCIL ACTION(S):**

Date: February 28, 2011

Roll Call Number: 11-0330

Action: [Amending](#) Chapters 74 and 102 of the Municipal Code regarding use of mobility devices by persons with disabilities. ([Council Communication No. 11-125](#)) Moved by Hensley that this ordinance be considered and given first vote for passage. Motion Carried 7-0.

Date: June 5, 2000

Roll Call Number: 00-1680

Action: On adoption of the Municipal Code of the City of Des Moines, 2000, Ordinance [#13,827](#). Moved by Coleman. Motion carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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