

BOARD & COMMISSION COMPARISON REPORT – January 14, 2014

To: Charter Change Committee (Rachel Siegel, Tom Ayers, Norman Blais)  
From: Infinite Culcleasure, Staff Assistant  
Re: Survey of Current Board and Commission Members  
Date: March 25, 2014

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The following summary includes results of an online survey of *Current Board and Commission Members* in the City of Burlington.<sup>1</sup>

Number of respondents from each board/commission:

1. Airport Commission (3 of 5)
2. Board of Assessors (1 of 3)
3. Burlington Housing Authority Board of Commissioners (1 of 6)
4. Cemetery Commission (0 of 5)
5. CCTA (1 of 2)
6. CCRPC (0 of 2)
7. Church Street Marketplace District Committee (4 of 8)
8. Development Review Board (4 of 10)
9. Electric Light Commission (1 of 5)
10. CSWD Board of Commissioners (0 of 2)
11. Conservation Board (2 of 10)
12. Design Advisory Board (3 of 8)
13. Fence Viewers (0 of 2)
14. Fire Commission (1 of 5)
15. Board of Health (1 of 6)
16. Housing Board of Review (4 of 6)
17. Library Board of Commissioners (1 of 8)
18. Parks and Recreation Commission (3 of 6)
19. Planning Commission (3 of 8)
20. Police Commission (1 of 5)
21. Public Works Commission (3 of 7)
22. Retirement Board (1 of 9)
23. Board of Appeals (2 of 6)
24. Board of Registration of Voters (3 of 10)

In your opinion, is this the right size for your board/commission? 40 responded “yes”, compared to 5 who responded “no”, and 2 who responded with “I don’t know”. (See Table 1 for which boards/commissions responded “yes”, “no” and/or “I don’t know”)

Table 1

<b>Yes</b>	<b>No</b>	<b>I don't Know</b>
Airport Commission (2)	Airport Commission	

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<sup>1</sup> Courtesy of SurveyGizmo.com

Burl Housing Authority Board of Commissioners		
CCTA		
Church St. Marketplace (4)		
Conservation Board (2)		
Design Advisory Board (2)	Design Advisory Board	
Development Review Board (3)	Development Review Board	
Electric Light Commission		
Fire Commission (4)		
Housing Board of Review (4)		
Library Board of Commissioners		
Parks & Rec (3)		
Planning Commission (3)		
Police Commission		
Public Works Commission (3)		
Retirement Board		
Board of Appeals		
Voter Registration Board (2)		Voter Registration Board
	Board of Health	
	Board of Appeals	

Is the length for members of your board/commission appropriate? 40 responded “yes”, compared to 6 who responded “no”, and 1 who responded with “I don’t know”. (See Table 2 for detailed responses)

Table 2

<b>Yes</b>	<b>No</b>	<b>I don’t know</b>
Airport Commission (3)		
Board of Assessors		
	Burl Housing Authority Board of Commissioners	
CCTA		
Church St Marketplace (4)		
Conservation Board (2)		
Design Advisory Board (2)		Design Advisory Board
Development Review Board (4)		
Electric Light Commission		
Fire Commission (4)		
Board of Health		

Housing Board of Review	Housing Board of Review (3)	
Library Board of Commissioners		
Parks & Rec Commission (3)		
Planning Commission (3)		
	Police Commission	
Public Works Commission (3)		
	Retirement Board	
Board of Appeals		
Voter Registration Board (3)		

- **Would you support term limits?** 13 responded “yes”, compared to 26 who responded “no”, and 8 who responded with “I don’t know”.
- **Does your board/commission currently require certain qualifications or specifications for any of its members?** 16 responded “yes”, compared to 30 who responded “no”, and 1 who responded with “I don’t know”.
- **Are they appropriate?** 15 responded “yes”.
- **Do you believe it should?** 8 responded “yes”, compared to 22 who responded “no”.
- **Do you believe that members of your board/commission should be required to be residents of the City of Burlington?** 40 responded “yes”, compared to 7 who responded “no”.
- **Is geographic diversity or wards within the City among the members of your board/commission important?** 22 responded “yes”, compared to 20 who responded with “no”, and 5 who responded with “I don’t know”.
- **Do you feel your board/commission achieves this goal?** 68% “yes”, compared to 31% “no” (22 responses).
- **Is a balance of political affiliation mandated on your board/commission?** 6 responded “yes”, compared to 26 who responded with “no”, and 15 who responded with “I don’t know”.
- **Do you believe political affiliation is or should be an important element of membership on your board/commission?** 7 responded “yes”, compared to 40 who responded “no”.
- **Is your board/commission sufficiently diverse and inclusive with regard to age, race, gender, sex, ethnicity, religion, sexual orientation, national origin, cultural heritage, and socio-economic status?** 14 responded yes, compared to 27 who reported no, and 6 who responded with “I don’t know”.
- **Was the application process clear to you?** 40 responded “yes”, compared to 7 who responded “no”.
- **Did you receive a job description for your position (either when you were appointed or since then)?** 19 responded “yes”, compared to 25 who responded “no”, and 3 who responded with “I don’t know”.

- **Was the job description accurate and complete?** 15 responded “yes”, compared to 4 who responded “no”.
- **Was this the appropriate way for you to be informed?** 38 responded “yes”, compared to 7 who responded “no”.
- **Do you believe the City Council should credit an incumbent over a new applicant with regard to a board/commission appointment?** 18 responded “yes”, 18 responded “no”, and 11 responded with “I don’t know”.
- **Do you believe your board/commission is functioning effectively?** 42 responded “yes”, compared to 5 who responded “no”. (See Table 3 for respondents who replied “no”).

Table 3

Airport Commission (1)
Burl Housing Authority Board of Commissioners
Church St. Marketplace (1)
Development Review Board (1)
Library Board of Commissioners

- **If your board/commission does not require qualifications or specifications (or if you do not know if it does) and you believe it should, or if you believe the existing qualifications/specifications are not appropriate, what qualifications or specifications are needed?**
  - “A job description is needed to show requirements and cmsrs. Specifications are political.” (Airport Commission)
  - “Transportation, accounting, marketing and management should be what members should have.” (Airport Commission)
  - “Although we do not have any formal qualifications needed, John did a wonderful job in sitting me down and explaining the entire process, sending me important information, and giving me an open line of communication to as questions before the hearings began in May. One great thing about having a small board is that John can sit down with everyone and be a valuable resource that we can talk to, and learn from. The only possible suggestion would be to have the board members attend a VT State Assessors conference (or equiv.) to get other perspectives on the hearing process and what information should be taken into consideration.” (Board of Assessors)
  - “I think there should be better vetting on who is allowed to be appointed. Certain members seem not to be acting in the spirit of the board’s intent.” (Burlington Housing Authority Board of Commissioners)
  - “There is a question in my mind as to whether the City’s seats on regional boards should be public officials (either staff or elected). CSWD board seat has been a staff position until recently. The CCRPC seat is filled by a former City Councillor. The CCTA seats (2) were filled until recently by two citizens.” (CCTA)
  - “I think you should have some emergency or medical background to help you better understand the true nature of what a fire fighter does, and what a vital role they really play in the community.” (Fire Commission)

- "I believe that the City Council should investigate the individual merits of each applicant to determine whether they can or will make a positive contribution to the operations of the commission. While many qualifications could prove useful to the deliberations of the commission the primary role of liaising between the community, the Department and the administration does not require specialized skills in any particular field."
  - "Other than being a City resident and voter, and interested in working on a commission that's all that I feel is needed."
  - "Applicants should have a health related background or some formal education in public health. I think one member should be a consumer, not a health care professional. (Board of Health)
  - "At least a college degree and preferably a law degree (JD). Neutrality which would exclude active landlords." (Housing Board of Review)
  - "The primary qualification necessary for the HBR is the capability to remain unbiased during each hearing. Members with strong political affiliation in favor of a tenant/landlord should not serve unless the bias can be kept in check. Knowledge of legal opinions and interpretation of the law is helpful."
  - "We are undertaking a strategic planning process and assessment of commission members and the skills they bring. I believe there will be an annual report when new commissioners are due to be nominated that will indicate what is most desired to keep a balance of skills and knowledge on the commission." (Library Board of Commissioner)
  - "Geographic distribution so that most of the city is represented." (Parks and Recreation Commission)
  - "Verifiable knowledge of the police function." (Police Commission)
  - "It does but for the retirement board a certain level of financial literacy and a competent of release time for education would be great. (Retirement Board)
  - "Training would be helpful for new members with computers." (Voter Registration Board)
  - "Tries to maintain balance of political parties and ward representation."
- **Do you believe that members of your board/commission should be required to be residents of the City of Burlington?** (39 yes, 7 no)
  - **If geographic diversity is important and has not been achieved, what type of geographic diversity would you suggest?**
    - "The only point I would make here is that it would be nice to get more diversity. Geographic is important as there are affluent renters, middle class renters, working poor renters and section 8 renters. While this commission is pretty fair and balanced, I would like to have the board better reflect both ideas/values of the renters as well as the landlords." (Burlington Housing Authority Board of Commissioners)
    - "We have just 3 of 9 members that are not from Ward 5 or 6, and only recently got our first New North End member. I think having some members from ONE, NNE, and South End is important, but I don't think we should strictly have at least one member per ward or something like that because the geographic

diversity isn't more important than relevant knowledge and experience.”  
(Conservation Board)

- “A member from each ward at a minimum.” (Development Review Board)
- “No more than 2 members or alternates from any ward.”
- “The right wingers in Wards 4 & 7 are greatly overrepresented on the HBR. With 7 wards and 5 members, no two members should come from the same ward.” (Housing Board of Review)
- “I don't think it needs to be formal, but when councilors are considering candidates, they should strive for a diversity around the city. We have a lot of ONE folks compared with the city's population distribution. It's getting better though. (Public Works Commission)

- **Is a balance of political affiliation mandated on your board/commission?** (6 “yes”, 26 “no”, 14 “I don't know”)
- **Do you believe that political affiliation is or should be an important element of membership on your board/commission?** (7 “yes”, 39 “no”)
- **How or why is it important?**
  - “This may or may not be important and what I am about to say is more gut feel than proven fact... Nevertheless, here it goes. Leaning right of center tends to favor the landlord and leaning left of center tends to favor the tenant. We are a non-political board, so it shouldn't play a role, but political leanings do impact people's core values and thus does have a role on this board.” (Burlington Housing Authority Board of Commissioners)
  - “Each of the parties represent certain constituencies that need their voices to be represented.” (Development Review Board)
  - “There should be a balance. Currently, students and tenants are at a great disadvantage at the HBR.” (Housing Board of Review)
  - “I think the three parties may have different priorities in terms of taxes. I don't think one party's philosophy should stand unchallenged.” (Board of Appeals)
  - “It would not be wise for one group to dominate the board for decisions.” (Voter Registration Board)
  - “Balance when determining issues.”
  - “Though it shouldn't matter to uphold VT voting statutes, political party affiliation does affect views of some members regarding the registration process.”
- **Is your board/commission sufficiently diverse and inclusive with regard to age, race, gender, sex, ethnicity, religion, sexual orientation, national origin, cultural heritage, and socio-economic status?** (14 “yes”, 26 “no”, 6 “I don't know”)
- **Do you have any suggestions for how the City could encourage greater diversity?**
  - “There is a paucity of applicants, thus not allowing a diversity that is needed.” (Airport Commission)
  - “Outreach to more women and minorities.”

- “There are certain wards that have higher concentrations of diversity than others. That being said, advertising leadership opportunities among those areas would allow those constituents to have opportunities that they may feel are unattainable or not available to them. Of course everyone is available for these opportunities, but it would be important to make sure that all community members know that.” (Board of Assessors)
- “That’s always the sticky wicket... raise awareness of what tenants rights are... raise awareness of what landlords rights are... is all I can think of and how to do that I leave to the professionals.”
- “It is hard on these regional boards since there are many different appointing entities. As such, each municipality makes their own decision based on their needs and is not looking at the entire picture of the full make up of the board’s background.” (CCTA)
- “I don’t know what appropriate diversity would look like for the commission. Three of nine seats are held by women business owners, two of whom are also residents. The age range seems broad, though I am making assumptions about commissioner ages. I do not know the sexual orientation of every commissioner. There are no commissioners of color. More diversity would be better, though I don’t know how it should be accomplished—should we strive to reflect the makeup of fee payers, and if so property owners or the business owner to whom they pass on the fee through rental agreements? Or should we strive to reflect the makeup of the city, and if so, how to do so while ensuring that we maintain skills and knowledge of retail operation, property management, and economic vitality?” (Church Street Marketplace)
- “Encouragement at this level is up to the City Council during the approval process and recruitment. Each councilor must take responsibility to include those they feel should serve on the board.”
- “Diversity should happen naturally. It can’t and should not be forced. People should sit on boards/commissions who are qualified, regardless of their gender or skin color.”
- “You can engage a diverse group but it is impossible to force participation.”
- “No.” (Conservation Board)
- “Seek out pools of underrepresented people, for the Conservation Board, we could hold recruitment brown bags or post openings at the many local environmental consultants for example.”
- “No. Design and construction is inherently male and Caucasian. An effort should be made to invite women and people of color to the board.”
- “Require women on the board by its charter. We are 7 dudes – not good.” (Design Advisory Board)
- “There are currently no women or minorities on the board. This may be due to the fact that the construction and architecture industries (from which the board members from) are typically male-dominated industries. I don’t know how these positions are advertised, but a broader outreach may result in a more diverse field of volunteers. I don’t believe geographic location should be a factor for board members. Projects that come before the DAB are evaluated without regard to location or ward. I also don’t believe political affiliation should be a factor for

- board members. We currently have a good mix of perspectives on the board, which I believe is due to a variety of professional backgrounds and careers (architect/home inspector/contractor, etc.) and not political affiliation.” (DAB)
- “This board is entirely white males except for one white female member. It would be great if new younger more diverse people challenge existing members that they get priority – this board needs new members, all of the male members have been on this board for a VERY long time.” (Development Review Board)
  - “There should be greater effort to recruit new faces into these offices, and strongly encourage people of color, of different cultures and backgrounds to be involved.” (Development Review Board)
  - “The commission application process should be more proactive in reaching out to underrepresented communities within Burlington and the requirement of sponsorship from a member of the City Council should be eliminated.” (Fire Commission”
  - “No.” (Board of Health)
  - “Reduce the term limits for this appointment and you may attract more applicants for the HBR.” (Housing Board of Review)
  - “This is one of the tasks the commission has set for itself to identify need and strategies for encouraging involvement in governance from a more diverse population. For the City, I think a real outreach and education process, and more clarity on the city website about what it means to serve and how to get involved will be useful.” (Library Board of Commissioners)
  - “We should be seeking better representation from minority groups and youth.” (Parks and Recreation Commission)
  - “I agree it is difficult but really a community wide problem not a board problem. This should be a factor but not the primary one for appointments.”
  - “Other than approximate age, sex and race (which are obvious by appearance), we have not shared with each other our status as to other issues. It may be intrusive to ask the status of all this to applicants.” (Planning Commission)
  - “No not at this time.” (Police Commission)
  - “These positions are demanding of people’s time. To encourage greater diversity, we need to REDUCE the burden on these groups so they can focus on a few select (and significant) issues. This will help attract people who don’t want to devote their time to long meetings about issues of little consequence to their community.” (Public Works Commission)
  - “Keeping workload manageable would make service approachable for more people.” (Public Works Commission)
  - “Some boards/commissions would benefit from quota diversity and some will not. The retirement board requires some expertise in financial matters that any person can possess, but that may be a higher need than diversity for the commission/board. I can see where the police commission or other boards could REALLY benefit from a broad diversity or opinion and other factors as noted, but I do not think it should be a blanket requirement.” (Retirement Board)
  - “Make the hearing process less formal, while still adhering to rule of law. Recruit members of different races, ethnicities, sexual orientation, and SES.” (Board of Tax Appeals)

- “City Council needs to look at replacing Board Members who have been serving for many years and replace with new board members with fresh new ideas!” (Voter Registration Board)
- “City Council members can personally reach out to voters in their wards. Rachel Siegel has demonstrated this well to try to increase diversity on the city’s boards.” (Voter Registration Board)
- **Was the application process clear to you?** (39 yes, 7 no)
- **Do you have any suggestions for how it could be made clearer?**
  - “Please go back to your city councilor making a simple recommendation to the larger council about the candidacy. Having someone to go before the city council is too intimidating for a volunteer position. Plus, it makes for too many cooks in the kitchen. (Design Advisory Board)
  - “Yes, spell it out. In addition to the fact that the whole process changed this year there really is very little information available as to how to consider serving, what it means, what is needed, and how to do it.” (Library Board of Commissioners)
  - “Examples could be given on the form in terms of relevant experience.” (Board of Appeals)
  - “I believe the process has changed since I applied.” (Voter Registration Board)
- **Did you receive a job description for your position (either when you were appointed or since then)?** (18 yes, 25 no, 3 I don’t know)
- **Was the job description accurate and complete?** (14 yes, 4 no)
- **What was incorrect or missing?**
  - “One never knows the actual job until it is being done.” (Church Street Marketplace District Commission)
  - “More individual than you would have believed. The description accurate but more time and energy is needed to do the appropriate job.”
  - “Not enough detail regarding duties and time commitment.” (Development Review Board)
- **Was this the appropriate way for you to be informed?** (37 yes, 7 no)  
 The “nays” include the Airport Commission, Burlington Housing Authority Board of Commissions, Church St. Marketplace, Conservation Board, Library Board of Commissioners, Public Works Commission and the Retirement Board.
- **What would have been an appropriate way?**
  - “It was important but I wanted to type that I was seeked out vs. looking to join. Think the city could do a better job in trying to get people aware and interested vs. having NPA’s seek people out.” (Burlington Housing Authority Board of Commissioner)
  - “The city should do a much better job of promoting these boards/commissions to the public. Right now it’s a back room deal between potential commissioners and the City Council/Mayor.” (Church Street Marketplace District Commission)

- “Letter from City or email/call/etc. from nominating Councilor.” (Conservation Board)
  - “It was interesting attending a meeting, and it was good to get the letter, but I think a call from the head of the commission one is serving on would be appropriate.” (Library of Board and Commissioners)
  - “Email notice that my name was on the consent agenda for appointment, followed by prompt email notice that I had been appointed. Like a job application, folks who were not selected should also receive prompt notification.” (Public Works Commission)
- **Do you believe that the City Council should credit an incumbent over a new applicant with regard to a board/commission appointment?** (18 yes, 18 no, 10 “I don’t know)
- **Do you believe your board/commission is functioning effectively?** (41 yes, 5 no)
- **Why not?**
    - “One board member is clearly advocating vs. taking each case on its merits.” (Burlington Housing Authority Board of Commissioners)
    - “1) board members serving too long. Certain people have been there for too many years. 2) engagement of commission members. Some people never even attend meetings.” (Church Street Marketplace District Commission)
    - “often during public comment – certain members go into deliberation and give personal opinions about the application.” (Development Review Board)
    - “It does not have a strategic direction; was split between staff, commissioners and trustees in the past, the organizational documents are a shambles, the rules for operation and governance are confusion and need to be well organized and laid out. The Library Director and new Commission leadership has set this as a priority.” (Library Board of Commissioners)
- **Whether or not you believe it is functioning effectively, are there changes that the City could implement that you believe could help your board/commission function better?**
    - “That is now under consideration.” (Airport Commission)
    - “More autonomy as it had before.” (Airport Commission)
    - “Job descriptions for one. I would also like to see the board audited every quarter by the city to ensure we meet expectations.” (Burlington Housing Authority Board of Commissioners)
    - “#23 should offer more than yes/no, but yes, some mandated quarterly update to the relevant City Council committee (such as the CCTEUC or CCTA issues) would ensure that the reps are following the will of the Council. Maybe annual work plans for the commissions would be helpful too for setting priorities. (CCTA)
    - “As a lawyer, I know that there can be confusion about the authority and appropriate role of a commissioner. A fairly simple orientation that includes some

- basic civics lessons would go a long way.” (Church Street Marketplace District Commission)
- “Term limits – mandatory attendance to meetings - accountability and goal setting.”
  - “City Council should seek more input, instead of once or twice a year.”
  - “Better communications among and between the boards and commissions would be great.” (Conservation Board)
  - “Aside from appointing more diverse members, I am wary of the city trying to change the board. This one is very functional. I don’t like what I’ve heard about the Council trading candidates based on party. My board is non-political.” (Conservation Board)
  - “Inter-board communication and greater understanding/support of the ordinance.” (Design Advisory Board)
  - “Yes – please ensure the alternates are only voting on projects when there is a member missing. Having more than 5 people vote is confusing and unnecessary. Also – please appoint a woman to the DAB next. Gender diversity if needed.”
  - “Offer a class on overview on how meetings run the ins and outs of them – what information is appropriate to comment on and what is not.” (Development Review Board)
  - “There should be an attendance requirement, to avoid quorum issues. In addition, the city should strive to include racial, gender and economic diversity on boards.” (Development Review Board)
  - “Attending regional and national conferences.” (Electric Light Commission)
  - “We have a very well rounded group and the members truly care about the department. Our focus is to make sure our people are well equipped, well educated, and have the best of what they need to protect the people and property of the city!” (Fire Commission)
  - “No.”
  - “We function quite well with our current members and format.” (Fire Commission)
  - “We need a bigger budget and would benefit from 2 more members so that we could address more issues each year (we have 3 subcommittees on issues identified as important in our strategic plan. The Board of Health should actually have more than advisory authority and the city should consider that, as the largest polity in the state, it should probably have its own dept. of health. (Board of Health)
  - “Eliminate obvious conflicts of interest and establish some criteria of minimum IQ for board members. Increase geographic (ward) diversity. Don’t let the board select its own chairman.” (Housing Board of Review)
  - “As a quasi-judiciary board, all new members (and existing) would benefit from an introduction to the VT Statue and Burlington Ordinance from the City Attorney. This initial training should include rules of conduct for board members as well as the limitations of jurisdiction on the board.”
  - “See report from the City Attorney. Align city ordinance with State rules. Allow the use of email for notifications.”

- "It is in progress and we appreciate the cooperation of the city administration in trying to decipher the financial issues and governance documents." (Library Board of Commissioners)
- "I suggest that the present appointment process should be changed; that screening and recommendations for appointment should be made by a Council committee, not through the caucus system, and without attempting to balance party status." (Parks and Recreation Commission)
- "Boards should have final say over director's appointment. Since the charter change took place to give this power to the mayor I have noticed a decrease in the responsiveness to commission concerns." (Parks and Recreation Commission)
- "None." (Planning Commission)
- "To clarify on #22, all else being equal, an incumbent should be given priority over a new applicant. However, there may be specific reasons as to why an incumbent should not be reappointed: misses too many meetings, the council feels that the board/commission is going in the wrong direction; the incumbent is not doing a good job; there is a particularly strong applicant that the council feels would be a much better fit on the commission, etc."
- "No cancelling of monthly meetings." (Planning Commission)
- "Communication both ways." (Public Works Commission)
- "More interaction and direction from City Council as to the priorities they would like to see pursued. Reduce the scope of responsibilities by returning some to the department." (Public Works Commission)
- "The boundaries of our authority vs. the City Council (e.g. re: budgets and Departmental resources) should be more clear. It's odd that we barely see something (the budget) which has real impacts on the Department's ability to do its work." (Public Works Commission)
- "The retirement board is charged with managing money for the fund, but the folks at the bargaining table can adjust benefits and "spend" the money. This is a strange disconnect in that we never know what is on the table and have a chance to discuss the impact changes will have to the fund. This has gotten the fund into trouble in the past." (Retirement Board)
- "Back to #22: I do believe that incumbents should get "credit" for their service, but not that they should be appointed automatically. There does need to be continuity, and if someone has done a good job (attending meetings, been prepared, contributed, etc.), then I think s/he should receive some favor in terms of reappointment. I think the dominant party should strive to include members of the other parties on all commissions. Nepotism should be carefully guarded against." (Board of Appeals)
- "No." (Voter Registration Board)
- "Yes. One example we are working with the city to improve information on the website in regard to voting." (Voter Registration Board)

- **How did you learn of your appointment?**<sup>2</sup> (The following list is ranked by frequency)
  1. Letter: Airport Commission, Church Street Marketplace District Commission (3) CCTA, Board of Assessors, Design Advisory Board, Development Review Board (2), Fire Commission, Housing Board of Review, Library Board of Commissioners, Parks & Rec, Board of Appeals, Voter Registration Board = 15
  2. City Council Meeting: Board of Assessors, CCTA, Development Review Board, Library Board of Commissioners, Public Works Commission = 5
  3. Email: Church Street Marketplace District Commission, Conservation Board, Design Advisory Board, Fire Commission, Housing Board of Review = 5
  4. City Clerk: Housing Board of Review, Planning Commission, Public Works Commission, Voter Registration Board = 4
  5. City Counselor: Church Street Marketplace District Commission, Planning Commission, Retirement Board = 3
  6. Leadership of Board/Commission: Church Street Marketplace District Commission, Parks & Rec, Voter Registration Board = 3
  7. Word of Mouth: Airport Commission, Church Street Marketplace District Commission, Public Works Commission = 3
  8. City Website: Design Advisory Board, Police Commission = 3
  9. Phone: Electric Light Commission, Fire Commission (2) = 3
  10. Mayor's Office: Airport Commission, Voter Registration Board = 2
  11. Not sure: Parks & Rec, Housing Board of Review = 2
  12. Lori Olberg: Planning Commission, Board of Appeals = 2
  13. NPA: Burlington Housing Board of Commissioners = 1
  14. Minutes Online: Conservation Board = 1
  15. Front Porch Forum: Board of Health = 1
  16. Called a city counselor to find out who was selected: Fire Commission = 1
  17. "A request for volunteers was forwarded thru my office": Design Advisory Board = 1
  18. "My city counselors asked me to apply": Development Review Board = 1
  19. "Citizens asked me to apply": Development Review Board = 1

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<sup>2</sup> Because the survey had a drop-down-menu option, not all responses can be easily categorized. For Example, "From Lori" could mean 'word of mouth', and doesn't specify whether she notified them by phone or mail; "a request for volunteers was forwarded thru my office" does not specify the means, etc. Also, some respondents learned about their appointment from two different means, while others replied to the simple question of how they learned they got the position with "citizens asked me to apply" – wrong answer, or "City Clerk" – which doesn't tell us HOW.



disabilities, including those who are blind or have low vision. Commenters argued that the cost of making Web sites accessible, through Web site design, is minimal, yet critical to enabling individuals with disabilities to benefit from the entity's programs and services. Internet Web sites, when accessible, provide individuals with disabilities great independence, and have become an essential tool for many Americans. Commenters recommended that the Department require covered entities, at a minimum, to meet the section 508 Standard for Electronic and Information Technology for Internet accessibility. Under section 508 of the Rehabilitation Act of 1973, Federal agencies are required to make their Web sites accessible. 29 U.S.C. 794(d); 36 CFR 1194.

The Department agrees that the ability to access, on an equal basis, the programs and activities offered by public entities through Internet-based Web sites is of great importance to individuals with disabilities, particularly those who are blind or who have low vision. When the ADA was enacted in 1990, the Internet was unknown to most Americans. Today, the Internet plays a critical role in daily life for personal, civic, commercial, and business purposes. In a period of shrinking resources, public entities increasingly rely on the web as an efficient and comprehensive way to deliver services and to inform and communicate with their citizens and the general public. In light of the growing importance Web sites play in providing access to public services and to disseminating the information citizens need to participate fully in civic life, accessing the Web sites of public entities can play a significant role in fulfilling the goals of the ADA.

Although the language of the ADA does not explicitly mention the Internet, the Department has taken the position that title II covers Internet Web site access. Public entities that choose to provide services through web-based applications (e.g., renewing library books or driver's licenses) or that communicate with their constituents or provide information through the Internet must ensure that individuals with disabilities have equal access to such services or information, unless doing so would result in an undue financial and administrative burden or a fundamental alteration in the nature of the programs, services, or activities being offered. The Department has issued guidance on the ADA as applied to the Web sites of public entities in a 2003 publication entitled, *Accessibility of State and Local Government Web sites to People with Disabilities*, (June 2003) available at <http://www.ada.gov/websites2.htm>. As the Department stated in that publication, an agency with an inaccessible Web site may also meet its legal obligations by providing an alternative accessible way for citizens to use the programs or services, such as a staffed telephone information line. However, such an alternative must provide an equal degree of access in terms of hours of operation and the range of options and programs available. For example, if job announcements and application forms are posted on an inaccessible Web site that is available 24 hours a day, seven days a week

to individuals without disabilities, then the alternative accessible method must also be available 24 hours a day, 7 days a week. Additional guidance is available in the Web Content Accessibility Guidelines (WCAG), (May 5, 1999) available at <http://www.w3.org/TR/WAI-WEBCONTENT> (last visited June 24, 2010) which are developed and maintained by the Web Accessibility Initiative, a subgroup of the World Wide Web Consortium (W3C®).

The Department expects to engage in rulemaking relating to website accessibility under the ADA in the near future. The Department has enforced the ADA in the area of website accessibility on a case-by-case basis under existing rules consistent with the guidance noted above, and will continue to do so until the issue is addressed in a final regulation.

**Multiple chemical sensitivities.** The Department received comments from a number of individuals asking the Department to add specific language to the final rule addressing the needs of individuals with chemical sensitivities. These commenters expressed concern that the presence of chemicals interferes with their ability to participate in a wide range of activities. These commenters also urged the Department to add multiple chemical sensitivities to the definition of a disability.

The Department has determined not to include specific provisions addressing multiple chemical sensitivities in the final rule. In order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities. An individual's major life activities of respiratory or neurological functioning may be substantially limited by allergies or sensitivity to a degree that he or she is a person with a disability. When a person has this type of disability, a covered entity may have to make reasonable modifications in its policies and practices for that person. However, this determination is an individual assessment and must be made on a case-by-case basis.

**Examinations and Courses.** The Department received one comment requesting that it specifically include language regarding examinations and courses in the title II regulation. Because section 309 of the ADA 42 U.S.C. 12189, reaches "[a]ny person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post secondary education, professional, or trade purposes," public entities also are covered by this section of the ADA. Indeed, the requirements contained in title II (including the general prohibitions against discrimination, the program access requirements, the reasonable modifications requirements, and the communications requirements) apply to courses and examinations administered by public entities that meet the requirements of section 309. While the Department considers these requirements to be sufficient to ensure that examinations and courses administered by public entities meet the section 309 requirements, the Department acknowledges that the title III regulation, because it addresses examinations in some detail, is

useful as a guide for determining what constitutes discriminatory conduct by a public entity in testing situations. See 28 CFR 36.309.

**Hotel Reservations.** In the NPRM, at § 36.302(e), the Department proposed adding specific language to title III addressing the requirements that hotels, timeshare resorts, and other places of lodging make reasonable modifications to their policies, practices, or procedures, when necessary to ensure that individuals with disabilities are able to reserve accessible hotel rooms with the same efficiency, immediacy, and convenience as those who do not need accessible guest rooms. The NPRM did not propose adding comparable language to the title II regulation as the Department believes that the general nondiscrimination, program access, effective communication, and reasonable modifications requirements of title II provide sufficient guidance to public entities that operate places of lodging (i.e., lodges in State parks, hotels on public college campuses). The Department received no public comments suggesting that it add language on hotel reservations comparable to that proposed for the title III regulation. Although the Department continues to believe that it is unnecessary to add specific language to the title II regulation on this issue, the Department acknowledges that the title III regulation, because it addresses hotel reservations in some detail, is useful as a guide for determining what constitutes discriminatory conduct by a public entity that operates a reservation system serving a place of lodging. See 28 CFR 36.302(e).

■ 18. Revise the heading to Appendix B to read as follows:

**Appendix B to Part 35—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991**

Dated: July 23, 2010.

Eric H. Holder, Jr.,

Attorney General.

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**DEPARTMENT OF JUSTICE**

**28 CFR Part 36**

[CRT Docket No. 106; AG Order No. 3181-2010]

RIN 1190-AA44

**Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities**

**AGENCY:** Department of Justice, Civil Rights Division.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Department of Justice (Department) regulation that implements title III of the Americans with Disabilities Act

