

CITY OF WILLIAMSPORT, PA RESOLUTION

RESOLUTION # 9102

DATE 2-10-21

TITLE

APPROVAL OF CENTER FOR INDEPENDENT LIVING CONSENT DECREE


Resolution Authorizing Execution of a Consent Decree ("Consent Decree") made by and between: Center for Independent Living North Central Pennsylvania, North Central Pennsylvania ADAPT North Central Pennsylvania, Thomas Geico, Jay Harner, Tima Cummings and Marie Prince ("Plaintiffs"), and the City of Williamsport, Pennsylvania ("City"), to be entered by the United States District Court for the Middle District of Pennsylvania, Case No. 20-CV-01211.


WHEREAS, the parties have agreed to the following consent decree;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Williamsport, Lycoming County, Pennsylvania, that the attached consent decree is approved, and,

BE IT FURTHER RESOLVED, the Mayor, the City Controller, and the City's attorneys are authorized to execute any documents necessary to effectuate the intent of this Resolution, and the City Clerk be authorized and directed to attest and seal same.

Approved


City Clerk


President

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**CENTER FOR INDEPENDENT LIVING
OF NORTH CENTRAL PENNSYLVANIA, *et al.*,**

Plaintiffs,

v.

CITY OF WILLIAMSPORT,

Defendant.

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: **C.A. NO. 4:20-CV-01211-MWB**
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JOINT MOTION TO APPROVE CONSENT DECREE

All Plaintiffs and Defendant City of Williamsport, Pennsylvania respectfully submit to this Honorable Court for its consideration and approval the proposed Consent Decree, attached as Exhibit A, executed by the parties.

In support of this motion, the parties respectfully represent:

1. On July 15, 2020, Plaintiffs sued the City of Williamsport in federal court describing violations of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The lawsuit's focus has been on accessibility issues at City Hall. The parties have engaged in extensive mutual documentary discovery and are fully informed in the case. Extensive negotiations were facilitated by the court-appointed mediator, Hon. Joseph Barrett. The parties join in expressing their appreciation for Mr. Barrett's guidance and service.
2. The decree would provide that the City upgrade Williamsport, Pennsylvania's City Hall to meet federal Americans with Disabilities Act, and Section 504 of the Rehabilitation Act standards.

3. Plaintiffs include two organizations: the Center for Independent Living, North Central Pennsylvania, which serves persons with disabilities throughout the Commonwealth's Centre, Clinton, Lycoming, Montour, Northumberland, Snyder, Tioga, and Union counties. The Center is a Section 503 non-profit organization that advocates and promotes independent living for all persons with disabilities. Also a plaintiff is ADAPT, North Central Pennsylvania, the local chapter of a national grass-roots community that organizes disability rights activists to ensure the civil and human rights of people with disabilities to live in freedom. Several Williamsport residents also sued: Thomas Grieco, Tima Cummings; Jay Harner; and Marie Prince.
4. The parties respectfully request the Court to approve a consent decree which requires the City to pay plaintiffs \$55,000 in compensatory damages, to construct an accessible ramp at City Hall's main Fourth Street entrance, ensure that the elevator is accessible, and provide emergency fire alarms which the deaf and hard of hearing can perceive. In addition, the City will comply with all other ADA requirements throughout City Hall. Plaintiffs' attorneys' fees will be determined by separate motion after the Court acts on the Consent Decree.
5. Other provisions include that:
 - a. The City will retain a licensed architect or other professional trained and experienced in Accessibility Standards to survey and provide a written report on City Hall ADA compliance.
 - b. The City will adopt a workplan for compliance with the agreement.
 - c. A joint committee will be established by the Parties to advise the City during development of the workplan and may suggest provisions for the workplan. \

- d. The City will employ or designate a consent decree coordinator, reporting directly to the Mayor.
- e. The City will provide to City staff hands-on awareness training to communicate the experiences of a person with disabilities in various settings.
- f. The City will maintain an effective complaint procedure for grievances. The easy-to-access procedure will be available for residents and visitors to request installation, improvements, and repairs regarding City Hall access.
- g. The City and plaintiffs agreed to a process for resolving disputes.

For the above reasons, the Plaintiffs and the City of Williamsport respectfully move this Honorable Court to review and adopt the attached Consent Decree as an order of the Court.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**CENTER FOR INDEPENDENT LIVING
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CONSENT DECREE

CONSENT DECREE

This Consent Decree (“Consent Decree”) is made and entered into by and between: Center for Independent Living North Central Pennsylvania, North Central Pennsylvania ADAPT North Central Pennsylvania, Thomas Geico, Jay Harner, Tima Cummings and Marie Prince (“Plaintiffs”), and the City of Williamsport, Pennsylvania (“City”). Plaintiffs and the City are referred to in this Consent Decree collectively as the “Parties.” This Consent Decree is effective upon its approval by the Court.

I. RECITALS AND RELEASE

This Consent Decree is made and entered into with reference to the following:

A. On July 15, 2020, Plaintiffs filed this lawsuit against the City under the statutes cited at Recital I.A. above, and on the subject matter previously discussed between the Parties.

B. In entering into this Consent Decree, the Parties intend to resolve any and all claims for declaratory and injunctive relief, and for damages, that either were or could have been asserted in the Action on behalf of Plaintiffs with respect to ADA and Section 504 compliance at the City’s current City Hall, and, to any replacement locations, should the City move any of the services, programs and functions currently provided by the City, or housed by the City, at the current City Hall.¹ The entering into this agreement is not an admission of liability. The City denies any and all liability for these claims and this resolution is not an admission that there were any violations of the ADA or Section 504.

C. For the valuable consideration provided in this Agreement, the Plaintiffs acknowledge and agree that by accepting the terms of this Agreement that they are waiving rights on their own behalf, including all claims, including compensatory damages, attorney fees and costs, any and all expert witness fees and costs, including but not limited to claims pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, (Section 504”) and its implementing regulation, 34 C.F.R. Part 104; the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101-12213 (“ADA”); Sections 1983 and 1988 of the Civil Rights Act, 42 U.S.C. Sections 1983, 1988; the Pennsylvania Constitution, the United States Constitution, or any other applicable state or federal law for any claim that may arise or has arisen FROM THE BEGINNING OF TIME UNTIL EFFECTIVE DATE OF THIS AGREEMENT. They also agree to sign a general release in addition to this agreement.

D. The Parties intend this Consent Decree to bind and apply to the City, the City Council, and to all present and future officials, employees, agents, contractors and all those acting in concert with them. This Consent Decree also binds and applies to Plaintiffs. This Consent Decree constitutes the final and complete resolution of all issues addressed herein. The Parties intend that enforcement of this Consent Decree shall take place as provided herein.

II. DEFINITIONS

For purposes of this Consent Decree, the following terms have the following definitions:

A. "Accessibility Laws" means all federal laws and regulations requiring, promoting, and/or encouraging equal or improved access to persons with disabilities (including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, *et seq.* and all of its implementing regulations and design standards; and the Rehabilitation Act of 1973, 29 U.S.C. §§ 790, *et seq.* and all of its implementing regulations and design standards), and all amendments or other changes thereto insofar as such amendments or changes expand the rights or protections for persons with disabilities.

B. "Accessibility Standards" means the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), and all amendments or other changes thereto insofar as such amendments or changes expand the rights or protections for persons with disabilities.

C. "Action" means this lawsuit in federal court between the parties and in which this Consent Decree, or any amendment or subsequent order, is entered.

D. "City" means the City of Williamsport, the City Council, and all present and future officials, employees, agents, contractors and all those acting in concert with them. "City Hall" means the current City Hall, and any buildings, parts of buildings or other facilities which may in the future provide any services, programs and functions currently provided by the City at the current City Hall, or housed at the City.

E. "Counsel" means the law firms of David Ferleger and Thomas H. Earle.

F. "Dispute" or "Disputes" means any dispute relating to any violation of or failure to perform any of the provisions of this Consent Decree and/or disputes between the Parties concerning the interpretation, implementation, monitoring, compliance, and modification of the Consent Decree. All Disputes will be resolved using the procedure and standards outlined in Section IX.

G. "Disability Affecting Mobility" means any impairment or medical condition that limits a person's ability to walk, ambulate, maneuver around objects, or to ascend or descend steps or slopes, or to hear or see. A person with a Disability Affecting Mobility may or may not use a wheelchair, scooter, electric personal assisted mobility device, crutches, walker, cane, brace, orthopedic device, white cane, aids to sight or hearing, or any other equipment, aid, technique, or device to assist navigation along Pedestrian Facilities or entering or exiting City Hall, or moving from place to place within City Hall. Such a person may or may not be physically disabled, deaf, blind or low vision, or have an invisible disability. A person with a Disability Affecting Mobility is someone who is a person with disabilities under the ADA and Section 504.

H. "Timely Compliance" means completion of the work required for compliance with the Accessibility Standards:

- a. for the accessible ramp entrance to City Hall and elevator system compliance (Section III.A.) within eight months of the approval of this Consent Decree.
- b. for remaining City Hall compliance (Section III.B.) within one year of the approval of this Consent Decree, or
- c. for completion of any other obligations, on or before any deadline identified elsewhere in this Consent Decree, or in a written stipulation approved by the Court, or in an order of the Court.

I. "WCAG" means version 2.1 conformance levels A and AA of the "Web Content Accessibility Guidelines" published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), or any subsequent version(s) that are published as final recommendations.

J. "Will" and "shall" shall be construed to be mandatory and each to convey the same mandatory meaning.

III. CITY HALL BUILDING

A. Accessible Ramp Entrance to City Hall and Elevator System Compliance

The purpose of the requirements in this subparagraph III.A. is to ensure non-discriminatory accessible access to City Hall through a ramp and to upper floors by an accessible elevator system, all of which complies with Accessibility Laws and Accessibility Standards.

The City shall construct and provide an accessible entrance/exit ramp for City Hall at the Fourth Street side, integrated with the building design. It shall be available for use by anyone entering or exiting City Hall. The ramp shall start at street level, and end with entry into the public entry area of City Hall.

The City shall modify the existing elevator system in City Hall to satisfy all Accessibility Laws and Accessibility Standards (for example, with regard to both cab, controls, safety, and other elements) and at each floor level.

The City will provide Plaintiffs with monthly written updates on progress achieved, obstacles encountered, solutions adopted with regard to such obstacles, and any other relevant information on the ramp and elevator status set forth above.

The Parties agree that provision of the ramp is of the highest priority and that time is of the essence. The City will make all reasonable efforts to expedite completion and to minimize delay. Should delays be encountered or expected, the City will immediately inform Plaintiffs, and the City will simultaneously inform Plaintiffs of the steps it will take to minimize, avoid or resolve the delay.

B. Accessibility Consultant

A licensed architect or other professional trained and experienced in Accessibility Standards, and implementation, will be retained by the City to conduct an on-site review of City Hall compliance with the Accessibility Standards for people with physical and sensory disabilities to provide a written report specifying the actions which, when properly taken, would ensure compliance, and to provide a written report and continuing advice to the City to ensure that the workplan under Section III.C. below is designed to provide for compliance with the said Standards.

C. Workplan for Implementation

The City shall adopt a workplan for compliance with this Agreement. The workplan will include but not be limited to: tasks/activities, identification of persons responsible, and milestones reasonably timed and spaced over the implementation period to ensure that access is maximally and incrementally afforded during the process. The workplan shall provide for maintenance of effort. Maintenance of compliance shall be a permanent obligation of the City under this Consent Decree.

A Joint Committee ("JC") will be established by the Parties with two members appointed by Plaintiffs and three members appointed by the City. The members of the JC may communicate *ex parte* with the consultant; the JC will advise the City during development of the workplan, and may suggest provisions for the workplan. In no event shall the JC have any responsibility or obligation for compliance with the workplan.

The City will provide a draft workplan to Plaintiffs and to the JC, within one month of the Court's approval of this Consent Decree. These recipients may provide comments and recommendations to the City and one another within 21 days of receipt of the draft. The City shall revise and adopt a final proposed workplan within thirty days of the receipt of the comments and recommendations.

Should the City decide to move elsewhere any or all of the services, programs and functions currently provided by the City, or housed by the City, at the current City Hall, then in that case the City shall within sixty (60) days before any such move, develop a workplan for review, revision and adoption under the process and standards set forth in this sub-section of this Agreement. In the case of such a move, workplan covering the current City Hall shall nevertheless be implemented as provided in this Consent Decree, if the current City Hall or any part thereof, is to continue to be owned by the City or to provide any City services, programs and functions.

D. Modifications to Workplan

Proposed modifications to the workplan shall first be discussed with the Joint Committee for its recommendations. Following such discussion, a Party may formally request consent to a modification from the other Party; such request shall be in writing and shall include detail of the text of the requested change, the reasons for the request, and discussion of alternatives considered. The request shall also state that the requesting Party is aware of no circumstances which it believes will merit any additional request for modification.

The workplan may be modified by written agreement of the Parties, motion to the Court, or as a result of the Dispute Resolution procedure under Section IX below.

E. Workplan and Schedule Updates

The workplan schedule will be updated in writing on a monthly basis to reflect (a) work completed, (b) modifications resulting from any changes. The initial schedule and all updates will be provided to Plaintiffs and the Joint Committee, and each successive version of the workplan shall also be maintained on the City's website in an electronic format in accordance with WCAG.

IV. CITY CONSENT DECREE COORDINATOR

The City will employ or designate a coordinator who will oversee tasks relating to the development and implementation of this Consent Decree, the City's policies and procedures regarding the accessibility of City Hall and the City's efforts to maintain the accessible features of City Hall. Preference shall be given to candidates who have experience or training in Accessibility Laws and Accessibility Standards. Should an otherwise-acceptable candidate not have such experience or training, the candidate shall obtain such training before starting work as ADA Coordinator.

The ADA coordinator will be tasked with ensuring coordination between relevant City departments regarding accessibility-related matters; and between the Joint Committee and the City. The ADA coordinator will be available to the public to provide information on accessibility to City Hall and with the status of implementation of this Consent Decree.

The ADA coordinator will report directly to the Mayor of the City. The coordinator will be assisted by sufficient professional and support staff.

V. TRAINING

The City will develop training of staff involved in ensuring the accessibility which training will cover Accessibility Standards. This training will be hands-on awareness training to communicate the experience of a person with disabilities in various settings, and will be provided by Plaintiffs CIL NCP and ADAPT at a reasonable fee to be agreed upon within forty-five (45) days of approval of this Consent Decree; absent agreement, such training shall be provided by an entity mutually agreed upon by the parties within ninety(90) days of such approval.

VI. EFFECTIVE COMPLAINT PROCESS

The City will maintain an effective complaint procedure for grievances. The procedure will be available for residents and visitors to request installation, improvements, and repairs regarding City Hall access. The City will acknowledge complaints to the complainant within no more than seven (7) days of receipt, and will provide a substantive status report to the complaint within thirty (30) days. The updated complaint procedure will include:

- a. A process for complaints to be routed to the ADA Coordinator and appropriate individuals involved in implementing the Transition Plan within forty-eight hours of receipt by a City employee;
- b. Deadlines for the City to investigate, respond to, and update complainants as well as timelines for complaints to be resolved; an appeal process with deadlines shall also be provided.
- c. A process to allow for complaints to be submitted via phone, email, letter, and/or online, in electronic formats that are accessible to people with disabilities in accordance with WCAG;
- d. A process to ensure that complaints are addressed within a reasonable timeline.

VII. REPORTING & MONITORING

Plaintiffs may request from the City implementation information in writing, and the City will provide a substantive response within one (1) week of such a request; Plaintiffs and the City will participate together in status meetings at least every three (3) months, except when an emergency or urgent situation justifies sooner meeting. Plaintiffs may communicate with the ADA Coordinator informally by telephone, email and in writing. Plaintiffs may inspect public areas of City Hall without notice to the City, and the ADA Coordinator will upon request provide Plaintiffs with access to non-public areas which are covered in the workplan.

VIII. DISPUTE RESOLUTION

All disputes concerning the interpretation, implementation, monitoring, compliance and modification of this Agreement will be resolved as follows:

A. Notification in Writing

Disputes will be brought in writing to the attention of the other Party as soon as practicable.

B. Meet and Confer

Unless otherwise agreed to by the Parties, with respect to any dispute concerning this Consent Decree, the Parties agree to meet and confer in good faith, within ten business days after a dispute is raised in writing by one of the Parties to discuss and try to resolve such dispute. In an emergency, a Party may dispense with this Meet and Confer step and proceed directly to submission to the mediator.

C. Joint Agreement for Submission to Mediator

Failing a resolution by the Parties and only upon agreement of both parties, which agreement may be withheld for any reason, the Parties may submit the dispute to a single mediator. The mediator must be agreed upon by the Parties. The mediation will be held and

completed within three (3) weeks of submission unless the assigned mediator's calendar will not allow for such scheduling. In such an instance, the mediation will be scheduled as soon as practicable. The Parties will split the costs of the mediation.

D. Submission to Court

Failing resolution of a dispute through the procedures identified above, either Party may enforce this Agreement and submit the dispute to judicial resolution, as described in Section X below.

IX. DAMAGES

The City shall pay in compensatory damages the following sums: \$55,000 to Plaintiffs. This may be divided amongst the Plaintiffs as they choose. Said payment shall be made within 30 days of the Court's approval of this Consent Decree. Payment shall be made in such manner as agreed to in the General Release Agreement.

X. ENFORCEMENT

This Agreement is judicially enforceable on application to the Court by either Party, recognizing that the subject of this Agreement is compliance by the City with federal Accessibility Laws and Accessibility Standards, of which federal courts would have had jurisdiction had the Parties not reached this Consent Decree. Jurisdiction is retained.

XI. ATTORNEYS' FEES AND COSTS

Defendant agrees that, as prevailing parties, Plaintiffs are entitled to reasonable attorneys' fees, litigation expenses, and costs for work performed related to this lawsuit and subsequent to the execution of this Agreement. This does not entitle Counsel to fees for consulting or other matters not related to the litigation. The parties shall attempt to agree on a reasonable fee. If an agreement is not reached, Counsel shall file a fee Petition with the Court within 45 days of the execution of this Agreement. The Defendant only agrees to pay reasonable fees related to the lawsuit filed by the Plaintiffs. The defendant does not waive any defenses to Counsels' fee petition by entering into this agreement and hereby reserves the right to dispute the Petition based upon any grounds, including the rate, time expended, or any other defenses it may have to the Petition, except that Plaintiffs are not prevailing parties under the applicable statutes.

[Signatures on next page]

AGREED AND ADOPTED:

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Attorneys for Defendant

City of Williamsport

**ADOPTED BY THE COURT
AND SO ORDERED:**

Hon. Matthew W. Brann

Dated _____