



# Metropolitan Nashville and Davidson County, TN

## Legislation Text

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**File #:** RS2023-135, **Version:** 1

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A resolution authorizing the Metropolitan Department of Law to compromise and settle the Americans with Disabilities Act claim of Jane Doe against the Metropolitan Government of Nashville and Davidson County, by adopting an accommodation policy for board and commission members and paying \$500.00 to Ms. Doe out of the Judgments and Losses Fund.

WHEREAS, Jane Doe is a member of the Metropolitan Public Arts Committee (Committee) and is an individual with a disability within the meaning of the Americans with Disabilities Act (ADA); and,

WHEREAS, the Department of Justice, on behalf of Ms. Doe, alleges that the Committee failed to provide reasonable accommodation to Ms. Doe, who is unable to attend Committee meetings in person because of the complications caused by her disability; and,

WHEREAS, the Tennessee Open Meetings law, Tenn. Code Ann. §§ 8-44-101, *et seq.*, does not provide for remote participation in the meetings of a local government committee, and a court could find that holding public meetings with all committee members participating in person is a fundamental aspect of Tennessee's Open Records Law and that failing to do so voids the committee's action; and,

WHEREAS, in *Palmer v. Michigan*, No. 1:22-cv-90, 2022 WL 908966, at \*1 (W.D. Mich. Mar. 29, 2022), a U.S. district court held that the Michigan Open Records Act must yield to the ADA and that refusing to provide reasonable modifications that would permit the complainant to fully participate (i.e., vote, make motions, second motions, and count towards a quorum) in committee meetings by virtual/electronic attendance violates the ADA; and,

WHEREAS, the parties wish to avoid litigation; and,

WHEREAS, the Metropolitan Department of Law recommends that where an individual's disability prevents that person from attending meetings of a local government board, commission, or other body in person, the Metropolitan Government should permit such individuals to fully participate virtually; and,

WHEREAS, after investigation, the Metropolitan Department of Law believes that this settlement listed is fair and reasonable and in the best interest of the Metropolitan Government and recommends that any and all claims or causes of action brought or that could have been brought by Jane Doe related to the events detailed above be compromised and settled for \$500.00, and that this amount be paid from the Judgments and Losses Fund.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: On the Metropolitan Government's webpages addressing non-discrimination, compliance with the ADA, and where members of the public may express a desire to be appointed to a board or commission, the following accommodation policy shall be included:

Consistent with Title II of the ADA, Metro Nashville will not discriminate against any individual on the basis of disability in the full and equal enjoyment of the services it provides by excluding or providing unequal treatment to persons with disabilities. 42 U.S.C. § 12132; 28 C.F.R. § 35.130. Metro Nashville shall make reasonable modifications and/or accommodations where necessary to avoid discrimination on the basis of

disability. 28 C.F.R. § 35.130(b)(7)(i). Specifically, where an individual's disability prevents that person from attending meetings of a local government board, commission, or other body, in person, Metro Nashville will permit such individuals to fully participate virtually. Metro Nashville board and commission members' participation in such virtual meetings shall not be diminished in any way, and they shall be entitled to vote, count towards a quorum, make and second motions, and otherwise permitted to participate in the same manner in which they would have if they were attending the meeting in person.

Metro Nashville's assessments of whether an individual has a qualifying disability shall be consistent with the ADA's directives. 28 C.F.R. § 35.101(b) ("[T]he definition of 'disability' in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA...The question of whether an individual meets the definition of 'disability' under this part should not demand extensive analysis."). A request for accommodation should be made to the ADA coordinator.

Section 2: The Metropolitan Department of Law shall annually send a memorandum or provide training to each department head and chair of each board and commission, informing them of this accommodation policy.

Section 3: The Metropolitan Department of Law is authorized to compromise and settle the Americans with Disabilities Act claim of Jane Doe for the sum of \$500.00, with said amount to be paid from the Judgments and Losses Fund.

Section 4: This resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

### Analysis

Jane Doe, a member of the Metropolitan Public Arts Committee ("Committee"), is an individual with a disability within the meaning of the Americans with Disabilities Act ("ADA"). The U.S. Department of Justice alleges that the Committee failed to provide reasonable accommodation to Ms. Doe, who is unable to attend Committee meetings in person due to her disability.

The Tennessee Open Meetings Act does not provide for remote participation in the meetings of a local government committee. Thus, a court could find that holding public meetings with all committee members participating in person is a fundamental aspect of the state law and that failing to do so voids the committee's action.

However, a U.S. district court opinion from Michigan held that the Michigan Open Records Act must yield to the ADA and that refusing to provide reasonable modifications that would permit the complainant to fully participate in a committee meeting by virtual or electronic means violates the ADA.

The Department of Law recommends settlement of Ms. Doe's ADA claim for \$500. In addition, the Department of Law recommends an accommodation policy that provides that, if an individual's disability prevents that person from attending meetings of a local government board, commission, or other body in person, the Metropolitan Government will permit such individuals to fully participate virtually.

The Department of Law will annually send a memorandum or provide training to each department head and chair of each board and commission informing them of this accommodation policy.

*Fiscal Note: The total settlement amount is \$500. This \$500 settlement, 3<sup>rd</sup> payment from the Judgment and Losses Fund in FY24 for a cumulative total of \$292,656. The fund balance would be \$17,260,121 after this payment.*