



DISABILITY RIGHTS OREGON

November 27, 2018

City of Bend, Oregon
710 NW Wall Street
Bend, OR, 97703
council@bendoregon.gov

Casey Bergh
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RE: Bend Mobility Lab, On-Demand Transit, and the Americans with Disabilities Act

To Whom It May Concern:

I'm writing to express the concerns of Disability Rights Oregon regarding a proposed Intergovernmental Agreement between the city of Bend, Oregon, and OSU – Cascades, to replace a previously existing city bus route with an “on-demand” pilot project, termed the “Bend Mobility Lab.” This project would operate an “on-demand” transit service in place of a fixed-route transit service, the Cascades East Transit Route 12, which was discontinued on July 1, 2018. Bend City Council has appropriated \$50,000 in funds towards the project pursuant to a motion made on September 5th, 2018.

The Request for Proposal sent out by OSU - Cascades, No. SF195212P, does not mention that the transit provider should be expected to comply with either Title II or Title III of the Americans with Disabilities Act in the provision of its services. Under a section titled “Accessible and Equitable,” the Request for Proposal does state that it is seeking a service which would meet eligibility requirements for federal funds and: “Upon request, provide a service that is accessible to and usable by persons along the full spectrum of disabilities, including both physical and intellectual disabilities.” However, compliance with Title II and Title III of the ADA is not otherwise mentioned, and documentation of trips provided to individuals with mobility impairments is not listed as a “performance measurement” in the RFP.

Title III of the ADA applies to “Transportation Network Companies” (TNCs) such as Uber and Lyft, who may become service providers for the Bend Mobility Lab. They can be viewed as a “demand responsive system” under 42 U.S.C. § 12181(3), defined as “any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.” These “demand responsive systems” are covered by Title III.

Demand Responsive Systems are specifically highlighted by 42 U.S.C. §12182 (C). The act makes it clear that they are required “to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.”

It is worth noting that “operate” is defined by the implementing regulations for Title III of the ADA as a definition which: “includes, with respect to a fixed route or demand responsive system, the provision of transportation service by a public or private entity itself or by a person *under a contractual or other arrangement or relationship with the entity.*” 49 CFR §37.3. This means that the City of Bend and the Bend Mobility Lab could be seen as “operating” a Demand Responsive System even if it only has a contractual relationship with the drivers providing the service.

Here, however, the pilot project is doubly implicated by another section of Title III, 42 U.S.C. §12184(a). This section states: “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.” The Bend Mobility Lab pilot project would clearly involve specified public transportation services provided by a private entity, given that the project is replacing a previously existing bus line and using city funds.

This section prohibits the transportation service from applying eligibility criteria which would: “screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity.” In the past, many “demand responsive systems” have failed to provide a way for wheelchair users to request an accessible transportation option through their web application (“app”). This in effect screened out wheelchair users from accessing the transportation system. Ensuring that this does not occur with the Bend Mobility Lab pilot project should be a top priority.

42 U.S.C. §12184(b)(2) also requires a covered entity to make reasonable modifications to its program services, and to remove barriers identified by 42 U.S.C. §12182(b)(2)(A). This section requires that a place of accommodation take such “steps as may be necessary to

ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.” It is therefore important that any web application used by the pilot project be accessible to those who are blind, or that an alternative method of accessing the transportation service is clearly provided to those who need it.

Ultimately, the legal minutia aside, the key point here is that the disability community has concerns over whether or not the Bend Mobility Lab “demand responsive” pilot project will provide a service that will prove as accessible as the eliminated Route 12 bus line. Accessibility requirements for buses and bus stops used for public transit have been clear to government entities for decades. Eliminating an existing accessible public transit route and replacing it with an experimental project raises obvious concerns.

It is our hope that, when evaluating proposals for the Bend Mobility Lab Transit Service Pilot, that the obligations of any provider to provide an *equivalent level of service* to people with disabilities as they do to those without disabilities will be clear. It is mandated by Title III of the ADA. If this project moves forward with a provider who hasn’t taken the accessibility requirements of Title III into account, it could easily lead to a legal cause of action. It is far better to ensure that the voices of people with disabilities in Bend are heard before this occurs, and that a provider is chosen who will provide legally-mandated accessible transit options.

Sincerely,

A handwritten signature in black ink that reads "Matthew S. Denney". The signature is written in a cursive style with a large, stylized 'M' and 'D'.

Matthew S. Denney
Staff Attorney
Disability Rights Oregon