



# City of Santa Fe, NM

## ADA TRANSITION PLAN

August 30, 2011

***Section I: Executive Summary***  
***Section II: Self Evaluation***  
***Section III: Access Compliance Assessment***



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**ADA TRANSITION PLAN UPDATE  
CITY OF SANTA FE**

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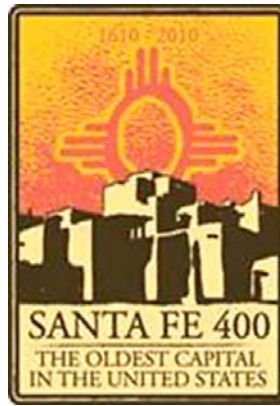
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# **Section: I**

# **Executive Summary**

- A. Introduction – Development of ADA Transition Plan Update**
- B. Overview: Self-Evaluation of Policies, Procedures and Practices**
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## A. INTRODUCTION: DEVELOPMENT OF ADA TRANSITION PLAN UPDATE

The Americans with Disabilities Act (ADA) of 1990 provides comprehensive civil rights protections to qualified individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. A primary goal of the ADA is to ensure equal participation in public life for all Americans with disabilities. Title II of the Act covers programs, services and activities of public entities, such as the City of Santa Fe.

Under Title II, a public entity may not deny the benefits of its programs, services, and/or activities to individuals with disabilities by maintaining inaccessible facilities, which house these programs, services and activities. A public entity's programs, services, and activities, when viewed in their entirety, must be made accessible to and usable by individuals with disabilities, except where to do so would result in a fundamental alteration in the nature of the program; result in undue financial and administrative burdens or threaten or destroy the historic significance of a historic property.

Section §35.150 requires that each program, service or activity conducted by a City, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a City is not required to make each of its existing facilities accessible (§35.150(a)(1)). Unlike Title III of the ADA, which requires public accommodations to remove architectural barriers where such removal is "readily achievable," or to provide goods and services through alternative methods, where those methods are "readily achievable," Title II requires a City to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. Congress intended the "undue burden" standard in Title II to be significantly higher than the "readily achievable" standard in Title III. Thus, although Title II may not require removal of barriers in some cases where removal would be required under Title III, the program access requirement of Title II should enable individuals with disabilities to participate in and benefit from the programs, services or activities of cities in all but the most unusual cases.

To comply with the Title II requirements for accessibility to City *programs, services and activities*, this Transition Plan:

- Evaluates existing policies, procedures and practices as they pertain to the City's programs, services and activities;
- Provides findings and recommendations with regard to policies, procedures and practices;
- Identifies physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- Assesses the extent of architectural barriers to program accessibility in the public rights-of-way and within the buildings, parks and other facilities operated by the City;
- Describes in detail the methods that will be used to make the facilities accessible;
- Estimates costs for mitigation solutions;
- Specifies the steps necessary to achieve compliance;
- Provides a schedule for barrier removal/mitigation;
- Sets priorities for barrier elimination; and
- Indicates the official responsible for implementation of the plan.

Per 28 Code of Federal Regulations, Part 35; Subpart D – Program Accessibility; §35.150 – Existing Facilities; (d) Transition Plan (1): The City shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. As such the City should invite the public to participate in the development of the Self-Evaluation and Transition Plan and to submit comments, questions, and recommendations.

## B. SELF-EVALUATION OF POLICIES, PROCEDURES AND PRACTICES

In addition to identifying and modifying physical barriers, Title 28 CFR Part 35, *Non Discrimination on the Basis of Disability in State and Local Government Services*, requires that a public entity evaluate its policies, procedures and practices. The following outlines the minimum requirements for a public entity's self-evaluation:

- Evaluate its policies, procedures, and practices as they pertain to the City's programs, services and activities; and make necessary modifications to those that do not meet the programmatic requirements of Title II of the ADA
- Provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments
- Maintain, file and make available for public inspection a list of interested persons consulted, a description of areas examined and any problems identified, and a description of any modifications made

The City must evaluate such policies, procedures and practices regarding communication, auxiliary aides and services, emergency response, publications, determination for undue burden, public activities, employment, and new construction of facilities, in addition to physical accessibility to City facilities.

It is also recommended that for program barrier mitigation, a detailed outline of administrative requirements and detailed requirements of needed policies be included. The policy outline would serve as a guideline upon which the City's future policies may be built.

**C. ACCESS COMPLIANCE ASSESSMENTS OF FACILITIES**

The transition plan is used to document the access barriers to the City's programs, services and activities. The documented access barriers identify existing building conditions that deviate from current State and Federal standards for new construction. For each barrier, this Transition Plan outlines the code deviations and requirements from the ADA Accessibility Guidelines (ADAAG) included the following facilities (buildings, parks and public rights-of-way):

NO.	BUILDING NAME	ADDRESS
1	City Hall	200 Lincoln Ave.
2	Main Library	122 Washington Ave.
28	Water Street Parking Lot	Water St.
58	Sandoval Parking Facility	Sandoval St.
4	Fort Marcy Complex	490 Washington Ave.
18	Fire Station 1	200 Murales Rd.
5	Senior Citizens Center	1121 Alto St.
6	Bicentennial Pool	1121 Alto St.
14	Day Care Center	1121 Alto St.
15	New Vistas	1121 Alto St.
16	La Familia Med. Cent.	1035 Alto St.
9	Monica Roybal Center	735 Agua Fria St.
10	Teen Center	735 1/2 Agua Fria St.
8	Salvador Perez Pool	601 Alta Vista
54	Water Division Admin. Bldg.	801 W. San Mateo
3	La Farge Library	1730 Llano St.
35	Police Records	2651 Siringo Rd.
44	Fire Station 7	2391 Richards Ave.
45	Genoveva Chavez Community Center	3221 Rodeo Rd.
11	Streets & Solid Waste Bldg. A	1142 Siler Rd.
13	Antonio Roybal Parks & Rec. Bldg. C	1142 Siler Rd.
20	Fire Station 5	1130 Siler Rd.
51	Santa Fe Trails - Public Transit Facility	2931 Rufina St.
22	Fire Station 8 & Police Professional Standards	2501 Camino Entrada
46	Municipal Courts	2511 Camino Entrada
53	Police Admin. Bldg.	2515 Camino Entrada
61	Southside Library	6599 Jaguar Dr.
52	Waste Water Admin. Bldg.	73 Paseo Real
56	Airport Terminal Offices	443 Airport Rd.
60	Marty Sanchez Links de Santa Fe Golf Pro Shop & Club	205 Caja del Rio Road

NO.	PARK NAME	ADDRESS
200	Alta Vista/Walkway	Alta Vista/Walkway
302	Ashbaugh Park	1703 Cerrillos Rd
203	Atalaya Park	717 Camino Cabra
128	Boy's Club	731 Alto St
204	Alvarado Park	2234 Calle Alvarado
205	Celle Lorca/Southridge Park	2075 Calle Lorca
401	Candelero Park	2213 Brillante St
120	Prince Park/Cross of the Martyrs	617 Paseo de Peralta

410	Nava Ade/Dancing Grounds Park	Governor Miles & Dancing Ground
215	Delgado	E. Alameda
126	Don Gaspar/Defouri	* Open Space
317	Dos Hermanos	Camino Carlos Rey
217	E. SF. River/Alameda Inn	Peralta & Alameda
421	Escondido Ct.	1574 Escondida Ct
110	Frank S. Ortiz Park Playground	160 Camino de la Crucitas
114	Fort Marcy Ballpark	Murales
422	Galisteo Tennis Court	2721 Galisteo Court
403	Genoveva Chavez Community Center Park	3221 Rodeo Rd
118	Peralta Park	323 Grant Ave
206	Cornell Park (Rose Garden)	1315 Galisteo Parkway
405	Herb Martinez Park	2240 Camino Carlos Rey
	La Resolana	2904 Camino del Gusto
130	Thomas Macaione Park	301 E Marcy St
310	Las Acequias	1100 Calle Atajo
408	Marc Brandt Park	Camino Consuelo/Siringo Rd
409	Monica Lucero Park	2356 Avenida de las Campanas
412	Ragle Park	Zia Rd
315	Rancho Del Sol (Phase II) Park	Jaguar
413	Rancho Siringo Park	Rancho Siringo Ln/Rancho Siringo Dr
213	Salvador Perez Park	601 Alta Vista St
124	Santa Fe River	W. Alameda
315	Rancho Del Sol (Nava Ade)	Sierra Nevada & Contenta
131	Torreon Park	1515 W. Alameda St
415	Villa Linda Park	4250 Cerrillos Rd & W Rodeo Rd
207	De Vargas Park	302 W. De Vargas St

In the rights-of-way, where the City has either sole or shared responsibility/authority over streets, roads and walkways, the ADA Transition Plan references the Public Works department's schedule for providing curb ramps or mitigating barriers in pedestrian sidewalks, giving priority to pedestrian routes serving public entities, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. Based on these prioritization criteria and in conjunction with City staff, a representative sample of intersections and mid-block sections in the rights-of-way serving City programs, services and activities was selected for inclusion in this plan.

The survey of City facilities fulfills the first requirement for the Transition Plan, by identifying physical obstacles limiting the accessibility of the City's programs and activities to disabled individuals. Field assessments of City buildings and parks were conducted in accordance with current accessibility standards – Title II of the ADA; the Americans with Disabilities Act; furthermore recommendations in the rights-of-way were also developed based on the Access Board's revised draft guidelines for Accessible Public Rights-of-Way.



**Report Production**

The following information contains the minimum data included in the Transition Plan-Assessment Reports:

- Item number of barrier and/or room numbers, corresponding to schematic site and floor plans
- Area/location of the barrier; for example room name or number
- Description of the barrier (as-built situation)
- As-is measurement/dimension
- Method of mitigation (e.g. physical alteration, purchase, program modification, equivalent facilitation, etc.)
- Detailed description of proposed solution and, if applicable, an alternative or interim solution
- Code citations, specifying the applicable sections in the State accessibility regulations, and in the federal standards
- Severity of individual barriers (three levels: 1=severe, 2=moderate, 3=mild)
- Unit and estimated unit price
- Total estimated cost for barrier removal
- Special site conditions (if applicable)

**D. PRIORITIZATION CRITERIA FOR BARRIER MITIGATION**

The relative importance of each barrier, according to its impact upon the disabled population was taken into account when developing the prioritization criteria for barrier mitigation.

Overall Prioritization Criteria according to programmatic functions:

- Importance of the program function
- Frequency of Use
- Program location and relation to other programmatic functions

Since persons with disabilities utilize certain buildings and facilities with greater frequency than other facilities, the impact of barriers identified at those facilities was deemed to be greater. Upon compilation of the survey results, appropriate City staff and the Mayor's Committee on Disability helped determine a prioritization criteria for key items found in the survey and obtain additional information to determine a final level of prioritization.

Prioritization Criteria for Facilities according to barrier location:

- Priority 1. Basic public access and hazardous conditions.
- Priority 2. Access to program function areas.
- Priority 3. Access to public common areas that support program function areas. (such as restrooms, drinking fountains, public telephones, etc.). Provision of visual/audible signal devices connected to the existing fire alarm system.
- Priority 4. Barriers not included in priorities 1, 2 and 3.
- Priority 5. Barriers not addressed by the ADAAG. However, they are addressed by the NM State Building Standards and/or NM DOT Standards.

The prioritization of barrier-mitigation within the City buildings and parks followed a 2-step process:

1. Priorities 1 through 5 were assigned to each record or barrier identified (as described below)
2. Priority numbers 1 through 34 were assigned to each of the City parks and 1 through 31 to each of the City buildings surveyed; with facility priority #1 being a higher priority than facility priority #2 and so on.

The Mayor's Committee on Disability also reviewed and provided input on the above-mentioned prioritization criteria. The identified barriers were prioritized and sorted for inclusion into annual barrier-removal projects based on the City's available budget streams for these projects.

Identified in the appendix of the Transition Plan, are proposed facilities barrier-mitigation sorted and assigned by the following City programs/plans (with corresponding Officials Responsible):

- Infrastructure Capital Improvement Plan FY 2011-2015 (Dir. - Public Works Department)
- 2009 Parks Bond Implementation Program (Dir. - Parks/Trails/Watershed Division)
- Facilities Maintenance Program (Dir. - Facilities Maintenance Division)
- Parking Facilities Operations & Maintenance Program (Dir. - Parking Division)

A higher priority order is given based on the above prioritization criteria and the facilities master priority number for each City facility, sidewalks within sections of mid-blocks and curb ramps at street intersections serving or connecting to City.

In the public rights-of-way (PROW), where the City has sole responsibility/authority over streets, roads and walkways, the ADA Transition Plan references the City's Street Overlay Program schedule for providing curb ramps or mitigating barriers in pedestrian sidewalks. In addition, the Transition Plan schedule prioritizes barrier-mitigation within pedestrian routes that serve public entities, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

Prioritization Criteria for PROW according to barrier location:

- Priority 1. Pedestrian routes wherein request(s) for barrier removal by any person with mobility and/or vision disabilities seeking full and equal access
- Priority 2. Pedestrian routes serving State and local government offices and facilities
- Priority 3. Pedestrian routes serving important transportation corridors, including pathways leadings to schools.
- Priority 4. Pedestrian routes serving commercial/business zones and other Title III entities
- Priority 5. Pedestrian routes serving residential neighborhoods and undeveloped regions.

It is also recommended that the City adopt a formal policy and procedure for the Streets Division within the PWD to follow when responding to curb ramp upgrade requests from residents on as-needed basis.

For barriers within the public rights-of-way, a 4-pronged approach is recommended:

1. PWD/Streets Division will prepare a mitigation schedule for pedestrian access routes from the nearest fixed route (Santa Fe Trails) bus stop(s) serving City offices/facilities to the site-entrance points of those facilities. If a technical infeasibility is determined, PWD/Streets Division will coordinate with PWD/Transit Division on relocating bus stops along accessible route serving said City offices/facilities.  
Pedestrian access routes serving the City's facilities should be prioritized over federal, state, county, school districts and other Title II facilities. Furthermore, City will intimate the New Mexico Department of Transportation (NMDOT) of existing barriers in pedestrian access routes along State highways/roads, thereby requesting NMDOT to provide the necessary improvements/alterations and/or to pre-schedule removal of identified barriers within NMDOT's ADA Transition Plan. Alternatively, barriers within State highways/roads where NMDOT are the Authority Having Jurisdiction (AHJ) may be addressed using negotiated State funding/resources.
2. PWD/Engineering Division's Streets & Drainage Maintenance Section will provide the City's Long Range Pavement Management Program (PMP) identifying street sections being resurfaced under this program over the next few years. As these Capital Improvement Projects are funded, this information will be shared with the PWD/Roadway Development Section, who will identify curb ramps that are not compliant with current ADA standards within the PMP's identified street sections. These identified curb ramps will be scheduled for upgrade to applicable standards in tandem with said projects.  
In general, when a feature in the public rights-of-way is altered, the requirements for new construction must be applied to the maximum extent feasible within the scope or boundary of the project that has been planned. As such, new work and new curb ramps that are included in the limits, boundaries, or scope of a planned PMP project must meet

all applicable Federal, State and local requirements. Having said that, the City is under no obligation to expand the scope or limits of a project to include other curb ramps or adjacent work outside the limits or boundary of the planned project. Existing curb ramps outside the project boundary need only comply with existing ADA Standards.

3. PWD will identify severe barriers within high traffic pedestrian access routes along arterial streets and the downtown area. The streets to be included and the definition of severe barriers will be determined in collaboration with the Mayor's Committee on Disability (MCD). Upon identification of said severe barriers, PWD/Streets Division will prepare a mitigation schedule for those severe barriers that are not scheduled for removal in tandem with City's PMP projects.
4. PWD/Streets Division will adopt a formal procedure/policy of reviewing citizen-requests for barrier-removal within pedestrian access routes and providing the necessary services determined through the review.

### Official(s) Responsible

The ADA requires that an official be identified as responsible for the implementation of the Entity's plan.

It is the US DOJ's view that compliance with 28 CFR 35.150(a), like compliance with the corresponding provisions of the section 504 regulations for public programs, would in most cases not result in undue financial and administrative burdens on a City. In determining whether financial and administrative burdens are undue, all City resources available for use in the funding and operation of the said service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of 28 CFR 35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the City.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The US DOJ recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. Having said that, the intention is that the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.

The Official Responsible for the implementation should be able to seek/acquire funding for ADA barrier removal work over the City's Transition Planning period. In most cities, it is the City Manager who can effectively control the City's budget line item – "ADA Transition Planning budget". As such, The City of Santa Fe will designate the City Manager as the Official Responsible for the implementation of its ADA Transition Plan. The current City Manager is Mr. Robert Romero and can be reached at the City Manager's office. In the City of Santa Fe, the barriers identified in Parks, Buildings and the Rights-of-Way will all fall in the purview of the Public Works Department Director and/or his respective Division Directors – i.e. Parks, Trails/Streets, Facilities Maintenance, Parking, etc.

Typically, the responsibility of making any particular City program, service or activity accessible to all persons, regardless of ability, rests with the official who controls the operating funds for that particular program, service or activity. To this end, the task of seeking/getting approval for funds from the governing body to make the said program accessible lies with the official responsible for the program.

### **Transition Plan Implementation**

The document should be maintained and updated for the duration of the Transition Planning period and a copy of the transition plan shall be made available for public inspection. Indication of the official responsible for implementation of the plan fulfills the final requirement of a Transition Plan.

The final product is a working document to be modified as barriers are removed or alterations are made. The Official(s) responsible and project managers overseeing the barrier-removal projects will document all such ADA improvements/upgrades. Also as part of this process, technical infeasibility, if any, to meet necessary accessibility compliance will be documented and filed for the City's records by the Engineer-of-Record on the project. It is also recommended to provide accessibility site audits (inspections) of on-going projects as part of the project close-out/certification. This documentation and verification of barrier-mitigation will be integrated into the City's ADA Transition Plan on a regular basis to ensure that barriers are "checked-off" and the Plan is current with a record of barrier-mitigation work. Annual reports of barrier-mitigation work may also be provided to City Council.

This is a living document and is open to modification throughout the transition period. Identified in the appendix of the Transition Plan, are proposed facilities barrier-mitigation sorted and assigned by the following City programs/plans (with corresponding Officials Responsible):

- Infrastructure Capital Improvement Plan (CIP) FY 2011-2015 (Dir. - Public Works Department)
- 2009 Parks Bond Implementation Program (Dir. - Parks/Trails/Watershed Division)

The City will continue to plan for a biannual "ADA Transition Planning budget". This budget will be used to plan mitigation of those barriers identified in the Plan that are not part of any CIP project or Bond program. This budget will be in addition to and separate from funds required for any ADA improvements and upgrades triggered on account of CIP projects and Bond Programs. The scope of work and budget for all such CIP and bond projects must incorporate the improvements triggered by applicable Federal, State and local accessibility regulations and codes.

Maintenance of accessible features is an integral part of the City's plan to transition into a more accessible destination. Also identified in the appendix of the Transition Plan, is a list of issues that will be included as part of the City's maintenance programs:

- Facilities Maintenance Program (Dir. - Facilities Maintenance Division)
- Parking Facilities Operations & Maintenance Program (Dir. - Parking Division)

**E. PUBLIC INPUT**

Thus far (for the Final Draft), public input has been received through correspondence with the Mayor's Committee on Disability and at the committee's public meetings.

Before the plan is adopted, the City will endeavor a wider outreach to solicit input on the development of its Transition Plan.

# **NOTICE**

CITY CLERK'S OFFICE

DATE 5-23-11 TIME 9:00am

SERVED BY Joe Lujan

RECEIVED BY Barclay

## **Of Public Comment Period & Public Input Meeting on Updated ADA Transition Plan & Self Evaluation**

In 1992, the city prepared a Self Evaluation and Transition Plan as required by Title II of the Americans with Disabilities Act (ADA) of 1990. The city implemented regulations that provided civil rights protections to individuals with disabilities in employment, public accommodations and municipal services & programs according to the Transition Plan. The Plan also identified which modifications were needed at city facilities to make them accessible for persons with disabilities and also guided the implementation of the modifications. The Americans with Disabilities Act mandates that every public entity re-evaluate its current programs, services and policies to determine whether they are in compliance with Title II regulations.

The City awarded a contract to Sally Swanson Architects to update the Transition Plan and to conduct barrier assessment surveys of City owned buildings, parks and public rights-of-way that lead to City facilities. In addition, Sally Swanson Architects conducted a Self Evaluation with City staff relating to the needs of persons with disabilities in service situations at all City programs and services.

The updated Transition Plan, excluding the 1500-page Barrier Assessment Survey, is available for public review through June 10 at all three City libraries and on the City's web site at ADA Transition Plan [<http://www.santafenm.gov/index.aspx?nid=2485>]. The Barrier Assessment Survey is available for review at 2651 Siringo Rd. Bldg E. Call the ADA Coordinator at (505) 955-4021 to schedule a time to review the Barrier Assessment Survey.

A public hearing on the updates is scheduled for June 15, from 5:00 to 7:00 p.m. in the Nambe Room, 2<sup>nd</sup> Floor, Santa Fe Community Convention Center, 201 W. Marcy. Sally Swanson Architects will conduct a brief presentation about the Plan followed by a question and answer session.

The city acknowledges the Mayor's Committee on Disability for their vital role in overseeing the development of the updated plan.

For access to an alternate format for reviewing the Transition Plan or for additional information, contact Joseph L. Lujan, ADA Coordinator at (505) 955-4021 or e-mail at [jllujan@santafenm.gov](mailto:jllujan@santafenm.gov).

**Public Hearing for ADA Updated Transition Plan and Self Evaluation**  
**June 15, 2011**  
**Santa Fé Community Convention Center**

A public hearing for public comment and input on the Updated ADA Transition Plan and Self Evaluation for the City of Santa Fé was held on this date in the Santa Fé Community Convention Center, Coronado Room, 201 W. Marcy, Santa Fé New Mexico.

City ADA Coordinator, Mr. Joseph Luján welcomed the public to the meeting at 5:00 p.m. He introduced Mr. Arfy Khambatta, the architect who prepared the draft transition plan. Then he introduced the members of the Mayor's committee on Disability who were present.

A Power Point Presentation was presented by Mr. Khambatta, with Swanson Architects. He said the Self Evaluation was to put in place a set of tools for the city to use in responding to the needs of the community with reasonable accommodation. Tools could include things like something with the members of the public to review a grievance procedure to find a reasonable accommodation. They were general procedures to be applied as brought forward by the community.

As he shared the slides of the Power Point, he made comments for those who were present.

Barrier Identification was to identify obstacles to individuals with disabilities. The city decided to identify and designate high priority facilities which were those with the highest frequency of use by the public. The list included 35 buildings and 35 parks that had most public use.

The transition plan included mitigating barriers on pedestrian sidewalks giving priority to those used by public most often as well as government routes and facilities. Sampling was used for Right Of Way (ROW) analysis for inclusion in the plan. The plan itemized the barriers within each facility.

Mitigation Method included a description of the problem, a solution and a preliminary cost estimate. It received a severity level which identified the deviation from code and a priority level on severity and frequency of use and location. Other special site conditions were noted if applicable and included all city facilities.

Prioritization Criteria were presented to the Mayor's Committee on Disability. The barriers deemed to be greater were those used most often by people with disabilities.

Mitigation Schedule referred to already funded programs the city had through the CIP program, the Parks Bond, maintenance and parking and the barriers that should be mitigated were flagged to be included in the programs. In the appendix of the plan was a list by year of mitigation.



Other barriers were not identified (orphan barriers) where funding was not yet identified.

The transition plan was a living document. It gave the City of Santa Fé a starting point and room to plan for the mitigation of those not yet identified.

### Implementation - Facilities

For facilities there was the CIP, the parks bond and other programs in addition to the line item in the City's budget for transition where the orphan items not associated with any funded program could be addressed. There could be some others identified and potentially these funds could be used to address a barrier in that sense.

The City would continue to plan with a biannual transition plan budget to identify the barriers not in any funded program and would be in addition to and separate from any others. The scope of work for them must incorporate the improvements required by city, state and federal government.

The Public ROW implementation had a 4 pronged approach. The first was *aligning* in coordination with the city's paving program. The Streets Division prepared a schedule it would implement and would request NMDOT assistance for those that were state routes. The Engineering Division in Public Works would identify street sections to be resurfaced and that was shared with roadways in Public Works for *curb upgrades* to standards in tandem with those projects.

The third prong *identified severe barriers* within pedestrian areas of dense traffic routes, arterials and the downtown area place in need with the Mayor's Committee on Disability.

Finally, Streets would adopt a *formal procedure for barrier removal* in access routes and through the review using the biannual budget tool.

The city thus far had received public input through the Mayor's Committee on Disability. Before adoption, the City would endeavor to get more comments to address before the transition plan was finalized and that was the reason for his hearing. He thanked everyone for their time listening to his presentation.

### **Public Input**

Mr. Luján asked for the public to speak with respect to this presentation first and then comments and questions on the transition plan.

Ms. Ann McCampbell introduced herself as a person with chemical sensitivity and a member of the Multiple Chemical Sensitivity Task Force (MCS). In listening to the

presentation, she noticed that the listings on the slides were strictly for physical barriers. If that was the case it didn't take into account visual impairment or hearing impairment. It seemed to her that it was out of balance in reference to the ADA Transition Plan which should include all people with any disabilities. She wondered if perhaps this was the first phase and others parts would follow.

Mr. Khambatta responded that the plan was developed to look at code deviations indicating deficiencies from the ADA accessibility standards that were enforceable by the Department of Justice as well as the New Mexico state standards on accessibility. With regard to barriers and obstacles to persons with visual disability or hearing disabilities, those were also taken into account as the standards addressed those.

Ms. McCampbell said she had more to say but that was all she would comment on regarding the presentation.

Mr. Sagemaya Dandy asked if Mr. Luján could describe the scope for questions. He didn't understand what was going on.

Mr. Luján said he was welcome to comment on anything on disabilities that the City affects. The Transition Plan addressed physical barriers that were identified in buildings, parks and ROWs leading to those facilities. But the public could talk about anything related to disabilities where the City could be of assistance.

Mr. Khambatta said the idea was to improve or make better the transition plan before it was adopted. So if anyone had ideas how this plan could be amended or things that could be added to it, that was what the City wanted to hear at this time.

Mr. Dandy stated that he lived at 1592 Upper Canyon Road. He said there was a witness present who was there on April 10<sup>th</sup> at 10:30 a.m. when he went to a meeting in council chambers. The meeting was with City Manager Robert Romero, Police Chief Eric Wheeler, Assistant Police Chief Anaya, City Assistant Attorney Kelly Brennan and ADA Coordinator Joe Luján. At that 45 minute meeting, Mr. Dandy was complaining about being denied access to certain businesses and was informed the city was not going to enforce those ADA standards.

Mr. Luján said this was not a meeting to contest a particular barrier but he was correct about who was at the meeting and he was at that meeting. He said the City was responsible only for its own building and was not responsible for enforcing Title 3 of the ADA. That was the responsibility of the Department of Justice. That didn't mean he couldn't go to businesses and tell them about ADA's rule of allowing service animals on their premises. He did follow up on that. But right now the meeting was not to address anything in Title 3 of the ADA but only to address the City's policies and procedures for the transition plan.

Mr. Dandy said if he was out of line the Mayor's Committee could tell him. He

said he applied to be on the state committee. One of his biggest complaints was how disheartened he was when told by Kelley Brennan that they were not going to enforce ADA laws. He thought that all City employees and especially the ADA Coordinator who was hired as a result of the consent decree by the Department of Justice that the City would do that. Title 3 applied to businesses and Title 2 applied to government facilities. In private facilities, they could accuse anyone of trespassing and they didn't like his dog being with him.

There had been many other people who were affected by that policy of Albertsons. At Albertsons's he was denied access and he heard about a woman who had her service dog there and had been thrown in jail after the manager told her no dogs were allowed in there. He didn't have the same problem with Albertsons on Zia or Zafarano.

His concern was to find out where to go when the law was broken and people took public positions to uphold the laws - city, state and federal laws. When laws conflicted, the laws that accommodated disabilities took precedence. He questioned how this plan could be implemented when the City was not going to enforce the ADA law. He asked where that left the people with disabilities and what their option might be.

Mr. Luján responded that the entire City staff and the governing body were aware of the law concerning service animals. The Plan had a section in it that covered questions about service animals. He had distributed the policy among City staff and facilities. As far as not enforcing the state law, he suggested Mr. Dandy needed to speak with Chief Rael because Mr. Luján could not explain why they didn't uphold it.

Mr. Dandy asked Mr. Luján why he didn't say something in that meeting when he was informed by Ms. Brennan about that. It was the Department of Justice that required the City to hire an ADA Coordinator.

Mr. Luján said he didn't have any jurisdiction over the police department. At the time of that meeting he was not aware of the state law. Later, he informed them and Mr. Dandy did get a response from Chief Wheeler at that meeting.

Mr. Dandy said he actually got a response from Ms. Brennan.

Mr. Luján thanked him for sharing his concerns and voicing his opinion. His statements were in the record of this hearing. He said he would like to limit each person to about three minutes so everyone could participate.

Ms. Alice Lee asked what procedure to use when she found a curb ramp that was not compliant.

Mr. Khambatta said as a citizen, she should bring it to Mr. Luján's attention that there was a barrier on a route of travel to wherever she was going. There was a grievance procedure on how much time the city had to respond to a grievance and

follow through. The guidelines and the grievance procedures were spelled out and if not addressed, she could take it to the next level.

One thing he covered in rules and responsibilities was that the Coordinator had responsibility as defined by the Department of Justice. He coordinated requests and program access for City facilities, program services and activities. It was hard for all City employees to know where to send people. Mr. Luján was the eyes and ears of the citizens to help get that answer back to the citizen.

Ms. McCampbell thought it sounded like a very good plan that was developed for addressing and mitigating physical barriers but ADA was a much broader law so to enforce it that transition plan needed to go beyond physical barriers. In the amendments in 2008 and 2009 the Congress reaffirmed the original idea of ADA that it was to be broadly applied. They redefined and expanded the definition of disability.

People with MCS and Electro Magnetic Field (EMF) sensitivity qualified under ADA. Interestingly, the guideline creators said specifically that chemical sensitive people were disabled under ADA. She thought it would be important to add information in the plan about MCS and EMF barriers and have mitigation for them as with other barriers.

On line, the draft report mentioned a 1,500 page assessment on ADAD barriers. She wanted to go through those same buildings and facilities to assess MCS and EMF barriers.

In any case, an appendix would do a good job to identify barriers for chemical and EMF sensitivity. Other documents would be helpful and she identified some of them for consideration and promised to provide the list in writing. She also drew attention to the operation and maintenance section that was on line.

The Governor made a proclamation on multiple chemical sensitivity (MCS) week, the state brochure on chemical sensitivity that was signed onto by the Governor's Committee and also the Commission on Disability had suggestions about MCS at public meetings.

She compiled recently a list of possible accommodations for people at work including the Department of Labor Job Accommodation Network and also a resource list for more information. It was crucial that the City continue to acknowledge MCS as a disability. People throw up their hands with people who were having trouble.

In the new amendments of the law it should not be a federal case for people with disabilities.

She agreed to help write the appendix. She submitted copies to Mr. Luján. The ADA was intended to eliminate discrimination against people with disabilities but if some counted and others didn't, it would be a complete antithesis of what it should be.

Mr. Khambatta replied that he and everyone in the City was in agreement that under those new amendments, disabilities of all kinds were covered, including EMF and MCS. They were qualified persons under the amended law. There was no argument there. As he mentioned before, Congress intended to make it easier for people with disabilities to have access and rights upheld. Everything she said he agreed with.

With regard to why it was not in the plan, the reason the enforceable version of ADAD and state code was used for this assessment was that there were a lot of papers out there but they were not enforceable until they were adopted by DOJ. In neither draft nor final rulemaking were there guidelines on either of these two disabilities. He was aware that Ms. McCampbell was on the U.S. Access Board that worked on the standards.

Just like a person with diabetes was not specifically mentioned in the transition plan, there was no mention of Braille readers or any other specific disability because when you refer to one or two types, where do you draw the line? The law with amendments covered so many people with disabilities. What would happen if we took everyone into account under the plan? The resources she mentioned were great resources in the JAN and EOC. Sharing that list with Mr. Luján would be very helpful.

The US Access Board's policy adopted regarding public meetings to refrain from strong scents should be a recommendation that the City also adopts as a policy for its public meetings. What it had now was a notice that if you needed reasonable accommodation, who to contact to make your request known. There was no blanket request for no perfume. So it was not really doing nothing. That wouldn't be fair.

Mr. Luján offered to make copies of anything Ms. McCampbell had for the Mayor's Committee. He said he was unable to open some of her attachments.

Ms. Jane Littlefield Bendt, 134 Fiesta, said she had "been here for 14 million years." She grew up on Garcia Street. She apologized for arriving late but could not find the meeting place. There were no signs for this meeting at all. There were almost no railings on the ramps out there. She could walk through the gravel but the last time she was told the fish out there were important so she could not walk through the gravel. She finally started knocking on windows and found it.

The last meeting she came to there was at least one sign but none tonight. And she didn't know what visually impaired people would do to find it.

She said she knew about building and laying concrete and bricks. She knew the New Mexico equal access act. To put up signs was not expensive. The railings on the ramps were not out there. Nobody seemed to know where the meeting was. She ended up in City Hall and found someone who told her where it was.

Regarding curbs she asked if someone would get rid of the "half lollipop rubber

mats” on the streets. They cost about \$400 each and there were two types of them. The ones with little slits cost less than the lollipop ones. They were not only cheaper but didn’t ruin the walkers and wheel chairs.

Mr. Luján agreed that additional signs would be helpful. He understood and apologized.

Ms. Hope Reed, 321 W Cordova Road, said she submitted some comments to Mr. Luján earlier and found the answers afterward. The ADA allowed creativity. It didn’t identify everything but allowed for creative solutions. The Santa Fé plan could be better than the Department of Justice plan. She asked the City to find the good solutions.

She noted that the Santa Fé Green Codes talked about low toxic building materials.

She asked what would happen to the comments from tonight’s meeting and what the date for having the finished plan was.

Mr. Khambatta said the comments at this meeting would be put in the appendix as a permanent record. If there were questions, the City would respond to the questions or concerns about how the plan was written and would also address why the City was not doing what the person requested.

Ms. Reed had received comments from Arthur Firstenberg by email and she read them. “The Transition Plan states that ‘a primary goal of the ADA is to ensure equal participation in public life for all Americans with disability.’ If this is true, then the Transition Plan does not meet its goal because the people who are being most excluded from participation in public life are also excluded from this Plan. I’m talking about people with chemical and electromagnetic sensitivities. There is not one mention of us in this plan. Many of us cannot go into public places at all, including cafes, restaurants, stores, libraries, hospitals, courthouses, government buildings, theaters, buses, trains and hotels. We are also excluded from most City facilities and we can’t come into the Convention Center to testify at this public hearing because there is WiFi throughout and it cannot be turned off.

“I am keeping my comments brief because until now the City of Santa Fé has been openly hostile to people with electromagnetic sensitivities. Until the City recognizes that we have any civil rights at all, there is no use in wasting valuable time including details that will be disregarded.” [His statement is attached as Exhibit A].

Ms. Katharine Lee, 3205 Rinconada Circle said she understood this plan was identifying physical barriers at City facilities, programs and services. She asked for a definition for physical barrier.

Mr. Khambatta said it was a physical obstacle as it pertained to ADA standards in

the new version. It was a barrier or any physical obstacle to accessibility to program service or activity.

Ms. Lee felt the whole thing was a little confusing.

Mr. Luján gave an example of a physical barrier. When they had a curb return with no ramp as an absolute barrier to a person using a mobility device. On a lesser degree would be a steep slope that didn't meeting specifications. With a 15% slope it would be dangerous, especially for those using manual wheel chairs. Another would be grab bars in a rest room stall that didn't meet the standard or were nonexistent. It was anything that didn't meet the standard and was non-compliant was a physical barrier.

Ms. Katherine Lee asked if it then was just for mobility impairment. Mobility was one thing but there were lots of other disabilities.

Mr. Khambatta said there were people in a certain mobility limitation where the 8% slope might work but for others it would not. It might comply with the technical ADA standards but might not make that particular feature accessible to all.

As far as people with other disabilities the survey used the ADA accessibility standards because that was the DOJ enforceable piece that the city could rely on. But that didn't keep the City from doing something outside of it.

If someone with MCS needed to attend this meeting, the city would need to determine what accommodations it could make. There needed to be an interactive process with city and citizen through the ADA Coordinator. For council meetings he asked if the request was made to the City Clerk. Mr. Luján agreed.

Mr. Khambatta said while the ADA standards spoke to other disabilities, it was not all encompassing. The assessment was done with respect to the enforceable accessibility ADA standards.

Mr. Khambatta agreed the standards didn't cover a lot. Therein was the problem. A qualified person with a disability also included someone who had a mental health issue as well.

Ms. McCampbell said it was implicit in the plan that other disabilities didn't count. But the City didn't have that option. One option would be to make clear what was covered and what was not. That had to be made really clear. Right now it was misleading.

Mr. Khambatta disagreed. Just because they were not listed didn't mean they were excluded. The City had put tools and processes in place to engage interactively with people with all kinds of disabilities and not just the few represented in this room or even the City.

Ms. McCampbell said it was also misleading to say the Department of Justice only enforced the accessibility standards.

Mr. Luján thanked all members of the public for their input and turned next to members of the Mayor's Committee to speak.

Mr. Dave McQuarie, 2997 Calle Cerrada asked if a written transcript of this public hearing comments be furnished to the Mayor's Committee on Disability for analysis prior to the Mayor's Committee reporting to the Governing Body.

Mr. Luján said he didn't see why not. They could send their endorsement or non-endorsement to the City Council.

Mr. McQuarie said if the people say what their concerns were and the Mayor's Committee had to just transmit them then it might include inaccuracies to the governing body.

Mr. McQuarie said regarding the comment about the whole updated transition plan that the plan had to be periodically updated especially to incorporate these sensitivities not previously under their jurisdiction.

Mr. McQuarie said in the original plan, Susan Swanson Architects was hired to do a sampling of facilities including approximately 30 buildings and 32 parks and to train staff because there were approximately 90 parks, seven trail systems, 2900 intersections and 417 bus stops in the city of Santa Fé that have never been evaluated. You have to have the evaluation of them to do this plan.

Mr. McQuarie asked if a complete list of all of the services and requirements would be in the transition plan. What were the services such as paratransit and others we might not be aware of where they had to be at the curb in order to be picked up? There was supposed to be a comprehensive list somewhere. At one time the MCD asked that it be completed.

Mr. Khambatta agreed that all the services that the city offers should be included.

Mr. McQuarie said the City Manager stated that the plan would include all of them in the transition plan before it was finalized. So he asked how long this would take to get the transition plan to the governing body. That update to the services must be included in the comprehensive schedule.

Mr. Khambatta said this update of the transition plan was being done in phases. This would be the first phase which included the high priority facilities. The subsequent phases would include those facilities that were not included in this phase.

Mr. McQuarie said the City Manager said the city staff would pick up the slack. A



lot of the services were used highly by those with disabilities, which included the new park and other facilities. The facilities were required to be in the transition plan before it is finalized. The draft didn't include them. That needed to be fixed. A grievance procedure must be included in the transition plan. One part of that was on discrimination toward persons with disabilities.

Mr. Luján thanked Mr. McQuarie for his comments and assured him they would be part of the record.

Mr. Khambatta asked if he was saying the grievance plan was not in the plan or that it needed to be better.

Mr. McQuarie clarified that one section of the plan was based on discrimination of persons with disabilities. The point he was making was that the appeal was made to the City Manager but the appeals of historic design could go as high as city council. He asked if the rest of these were not allowed to go before city council.

Mr. Khambatta replied that nothing stopped anyone in Santa Fé from going before city council. If the city has decided the grievance would go up to the City Manager, that was their policy. The Department of Justice didn't have language about what cities should do in dealing with appeals on their grievance procedures and whether or not an appeal should be taken before the city council.

The Department of Justice required them to have a procedure and nothing would stop a person with disabilities from going to city council anyway.

Mr. McQuarie said last fall a person with disabilities was trying to do that and it was never heard. Time was up. It leaves out that option where before it had the option of going before city council. In all public meetings of the city it has that an appeal would go to the governing body. He asked why this plan didn't have that procedure.

Mr. Luján said in the original 1992 plan it was part of the ADA grievance policy that an appeal would go to the City Council and not to the City Manager. But this one did have it going through the City Manager. But as Mr. Khambatta said, there was still an appeal process in place. A discrimination grievance could go to the City Manager but anyone had the right to go before the City Council.

Mr. McQuarie told Mr. Luján that he had dropped the ball on this one. It should be in the updated plan because the grievance procedure should say that. He asked what the basis was for that and who made that decision and on what basis.

Mr. Luján explained that in that grievance procedure there was a three pronged procedure and those would have to be exhausted before going to governing body. He was given the opportunity to use that procedure and it never happened.

Mr. McQuarie said the ADA Coordinator must answer in 30 days in writing. Somebody in the City had to have it. It said he would respond in writing in 30 days. "Submit in writing." Therefore the answer should be in writing.

Mr. Luján said he would be glad to pull out his notes on this matter. He did confer with the City Attorney and City Manager on this matter. He understood Mr. McQuarie wanted the Governing Body to be part of this appeals process. He could not make the decision on behalf of this administration. The governing body makes the laws and resolutions regarding land development, etc. They were not versed in the ADA. He wasn't to say they didn't know the ADA. But if it was his recommendation that it should be in there, he would submit that but could not say whether it would be accepted. He asked Mr. McQuarie if that was acceptable to him.

Mr. McQuarie said that other parts had it like historic design had such an appeal. This should have such an appeal to City Council.

Mr. Luján understood and would take his recommendation forward. This was the first opportunity for the public to respond to this plan but he was surprised that Mr. McQuarie didn't bring this up before at a meeting of the Mayor's Committee.

Mr. McQuarie said he did bring it up in January and was waiting for an answer. He was told then that there were questions about it and they needed to discuss it further.

Mr. Khambatta said his response was the same as a few minutes ago.

Ms. Dee Martínez said they were asked for their opinions and recommendations on the transition plan which they had given to Mr. Luján. She asked what would become of the recommendations. She asked if some of the changes the Mayor's Committee liked would be made.

Mr. Khambatta said the recommendations by the Mayor's Committee on Disability needed to be taken up by the City and a decision made whether to amend the plan was with the City Administration.

Ms. Martínez saw there was a survey on human resources. She asked if the Committee could see an example of those surveys and the data. Mr. Khambatta said they could.

Ms. Martínez noted it said here that city staff did not identify any programs or services that would exclude persons with disabilities. That told her they obviously didn't understand the eligibility requirements at all. The Committee had received complaints about transportation not being accessible to blind and deaf, announcements not being made, lack of information about tie downs, etc. A little boy with a white cane was not allowed on the bus with his service animal without an ID. They also got complaints

about service animals not being allowed in the convention center for meetings. The Governor's Committee on Disability had agreed to help out the cities with appropriate recommendations. The Mayor's Committee was willing to support accessibility for all to meetings and transportation and would like to have them looked at carefully.

Ms. Ronda Villa said to the public that she came to hear from the public and appreciated having everyone come out to speak at the public hearing this evening. She said the Mayor's Committee would take up service animals in the future. They were advisory, not enforcement. Neither was Mr. Luján. There were some new faces in the audience and she was glad to see that. On behalf of the committee she thanked everyone for coming out and invited them to attend meetings of the Mayor's Committee.

Ms. Amanda Phillips said she had been disabled with MCS for many years. One of the biggest problems for people with MCS was housing. A high percentage of them were homeless. About a year ago, Elder Grace was completed and she was 62 and really wanted to live there. She understood that Santa Fé Homes was part of it. But the units were not accessible for someone with MCS. So she asked if she could buy in and then rent it out for about six years until the chemical sensitivity declined. They said no. She saw a 60 year old contractor hanging out in a station wagon for over ten years and a 72 year old woman who lived in a Volkswagen Bug for 30 years. Finally many people give up and there is a high incidence of suicide. She had been that depressed recently.

She once had a very accessible apartment years ago and it was affordable. But now she didn't because the neighbor above her put in new carpeting. Thank goodness she had a van and started living in the van. But she was 62 now and didn't want to be homeless anymore. There were all these new housing projects in Santa Fé and seniors get to move right in but senior MCS people have to live in their cars. For people with MCS it was truly hard. Thank you.

Mr. Luján offered a chance for Mr. Dandy to speak again but he declined and would take his issue to City Council.

Ms. McCampbell spoke again. She disagreed with Mr. Luján. "You have way too much confidence in the policy and the procedure that - oh, if there is a public meeting or there is something, you should just call up and ask for what we need and ... You know, if someone needed a curb cut, they would not be able to call up two weeks before the meeting and say "I will need this curb cut before I can go to the meeting." We need a more proactive approach for accessibility.

Mr. Khambatta commented that in any interactive process between public agency and person with disability, there was always more than one solution so they should identify solutions that would work. The only solution might not be for the cleaning product to be changed six months before the meeting.

Ms. McCampbell said people should just say they would need this thing to get to

the meeting and it didn't just happen. The City's response to EMF has been abominable. The other document she wanted to submit was CDC's indoor environment policy for the City to adopt. The City's integrated pest management policy for 10 years has been great. But fragrances have no place in a public environment. The CDC policy was a good template and she asked for the city to adopt it. Less toxic cleaning products were good for everybody. There was so much this report could do. She hoped they would consider it. This was not access to a park or government but to the whole town. It was very important.

Ms. Bendt said she went to the Mary Gonzales Senior Center where one set of doors opened automatically when you push a button. The other set didn't. So if you have a walker, sometimes you get caught in the middle. She didn't know what you would do in a wheel chair. You'd really get caught. So there were government things in town that were not the City's fault but did need to be fixed. Looking at those sets of doors, there were some physically impaired people down there besides herself. She suggested that members of the committee with a little grey hair go down there to take a peek and see if they get caught. Ben Ray Luján did fix things. Some others didn't.

Mr. Luján reported that a Purchase Requisition was submitted to fix that problem at the Mary Gonzales Center. ADA didn't require those automatic doors but it was helpful.

Ms. Bendt said that might be true but the doors should not jail you in between.

Mr. Luján said in the survey, that was flagged. It would be included to add those automatic doors to the second set. That was an example of the requests people could make to him as coordinator. So those would be addressed in the near future.

Ms. Bendt said now he could work on the ramps at DeVargas Mall.

Mr. Luján said that was out of his jurisdiction to enforce that.

Ms. Bendt asked about the post office in DeVargas mall.

Mr. Luján said he didn't have jurisdiction on any private building.

Ms. Mary McGinnis said she had worked with people with MCS for several years. She heard Ms. McCampbell offering to volunteer for the appendix. She asked what happens if they work on the appendix and submit it. She wondered who would monitor it. Would it just be individuals making complaints or would it take 2-3 years to respond?

Mr. Luján said the appendix would include everyone who spoke here and that would be part of their plan. The Governor's Committee had submitted a few and Ms. McCampbell's group submitted quite a few. So it was duly noted.

Ms. McGinnis heard what he said that it would be noted and would be in the record and she understand the Coordinator could not be an enforcer but there needed to be a way to monitor it.

Mr. Luján reiterated that the Committee's recommendations would be definitely taken into consideration as well as the public's statements. The Committee was aware that it was being taken seriously. He didn't make the decision but would forward it to the administration.

Ms. McCampbell asked who the administration was.

Mr. Luján said it was senior staff members.

Mr. Khambatta said regarding finalizing that it sounded really final. This was a living document and could change. Priorities shift and budgets change. The Mayor's Committee was the voice for the disability community. Whether it was MCS or EMF, it was something that the Committee could take before the Mayor or the Governing Body regarding turning off the WiFi during public meetings, etc. These were recommendations that could be brought before the Mayor and the Governing Body for consideration. The sense he was getting here was that once this plan was finalized it would close the door to anything else. That was untrue. The transition plan was a living plan and could and should be modified as the city evolves.


Mr. Luján agreed. It could be amended. It was nine months overdue and he would like to complete this phase of the document and check into other issues that could be incorporated into this living document.

Having said that, in conclusion, he encouraged each of the people present to attend the Mayor's Committee on Disability meeting on the third Thursday from 10 am-12pm at GCCC in classroom 1. The purpose of the Committee was to recommend to the Governing Body how access could be improved.

It was now 7 pm and he closed the public hearing.

Ms. Villa added that if someone thought of other things they could be submitted directly to Mr. Luján.

Submitted by:

  
Carl Boaz, Stenographer

## **City of Santa Fe**

### **Updated ADA Transition Plan Public Hearing of 6/15/11 Responses to Questions**

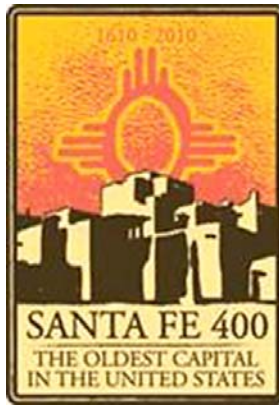
- 1) Page 2: In response to Ms. McCambell noticing the slides of the power point presentation were strictly for physical barriers, Mr. Khambatta responded accordingly and not to mention the requirements of 28 CFR 35.150 "Existing Facilities" See Section D, Transition Plan, sub section (3) (i).
- 2) Pages 3 & 4: Mr. Dandy has assumed the City is the enforcement agency for Title III requirements. Pages 2.2 and 2.3 of the Self Evaluation will be printed and given to Mr. Dandy in efforts to educate him regarding the 5 titles of the ADA. In addition, Mr. Dandy will be given printed information referencing the USDOJ ADA 2010 revised requirements for Service Animals. New Mexico State statute 28-11-2 & 3 titled "Qualified Animal Assistance Animal Act, Sub Section 28-11-4 "Penalty" specifies it is a misdemeanor for any person that violates these sections. Be advised this statute does not identify any enforcement authority. Mr. Dandy has been informed of the required obligation to permit service animals in all City owned facilities as per Title II of the ADA.
- 3) Pages 4 & 5: Ms. Lee inquired about the City's procedure to address a non-compliant curb ramp. As noted in the minutes, Mr. Khambatta informed Ms. Lee to contact the City's ADA Coordinator for resolution. He also informed her of the required ADA Grievance Procedure as noted in the transition plan.
- 4) Page 5: Ms. McCampbell spoke again regarding Multiple Chemical & Electromagnetic Sensitivities and this plan only identifies physical barriers and that the plan needed to go beyond physical barriers. This updated plan meets the Code of Federal Regulation requirements for existing buildings as mentioned in bullet #1. Once the DOJ adopts final guidelines by the U.S. Access Board with respect to MCS and EMS, the City will be required to comply. The ADA Coordinator will recommend that the Mayor's Committee on Disability consider proposing a request for policy similar to the US Access Board to refrain from wearing strong scents at public meetings and promote the use of scent free cleaning supplies in City buildings. Ms. McCampbell's MCS and EMS information was distributed to all members on the Mayor's Committee on Disability in their packet for the July 21<sup>st</sup> MCD meeting.
- 5) Page 6: Ms. Bendt verified the meeting room location signage was in place in the building and at the exterior elevator. Ms. Bendt is referring to detectable warnings and is unaware of the purpose and requirement. The ADA Coordinator has educated her since.
- 6) Page 7: Ms. Reed's questions in her letter of June 6, 2011, have been answered and will be included in the transition plan appendix as a permanent record.
- 7) Page 7: Mr. Firstenberg's concerns are the same as Ms. Ann McCampbell as noted on pages 2 & 5.

- 8) Page 8: Ms. Lee questioned the plan addressing disabilities other than physical barriers that affect mobility impaired. Mr. Khambatta responded accordingly based on enforceable standards.
- 9) Page 9: Mr., McQuarie requested transcripts of the public hearing for MCD members. The Meeting minutes were distributed to MCD members in meeting packet for the July 21, 2011 meeting. Mr. McQuarie questioned the facilities not included in the plan assessment survey. The buildings assessed were off a list provided by the City's Facility Division. Certain buildings were removed off the list because they had no public areas for programs, services or activities. I.E. Waste Water Treatment Plant, several Fire Stations or new buildings that include certificate of occupancies, i.e. the Convention and Visitors Bureau. The same applies for the parks that were surveyed. In public right-of-way, it was decided by the engineering director, assistant, consultant and ADA coordinator to survey and assess PROW that lead to City buildings and Parks. The ADA Coordinator will recommend a list shall be created of all City facilities that contain public areas that were not surveyed to be surveyed in a future phase. Pages 2.7 – 2.11 reflect the need to create policies and procedures for the 13 points suggested by the DOJ for the self evaluation. Pages 2.11 – 2.25 reflect suggested policies and procedures that include sample models. These policies and procedures shall be high priority. The next step shall address policies for programs and services offered by the City of Santa Fe. The ADA Coordinator will seek assistance and recommendations by the Mayor's Committee on Disability for policies and procedures concerning accessibility. The Grievance Procedure under the ADA is listed on page 2.25. Page 11: The ADA Coordinator will recommend the language in the procedure remains as written in deeming the City Manager or designee as the appeal process if not resolved by the ADA Coordinator. The final decision as whether or not to include an appeal process through the Governing Body will have to be made by the City Manager.
- 10) Page 11: The Human Resource self evaluation survey was forwarded electronically to Ms. Martinez on 7/25/11. At the MCD meeting of 7/21/11, members were asked if they wanted to see the HR self evaluation and no one responded. Members were notified of the availability of the surveys. In regards to the complaints the Governors Commission on Disability received, the ADA Coordinator was never notified by the GCD or the complainant. City staff is aware of most accessibility requirements mandated by the ADA and once formal policies are in place this will ensure awareness and practices by all City staff.
- 11) Page 12: Ms. Phillips spoke in concerns of Multiple Chemical Sensitivity in regards to housing. The City of Santa Fe does not provide housing programs however MCS guidelines may be in the near future in which at such time City owned facilities will be required to comply. The City recognizes MCS may cause a disability however without required specific guidelines, MCS would be difficult to enforce.
- 12) Pages 12 & 13: I urge Ms. McCampbell to work with the MCD in recommending potential accommodations for MCS at City public meetings. This could be a simple request to refrain from wearing strong fragrances for City public meetings. The ADA Coordinator would like more information to share with the Mayor's

Committee on Disability on the CDC's indoor environment policy Ms McCampbell mentions.

- 13) Page 13: Ms. McGinnis was concerned regarding monitoring of the appendix of the transition plan. The appendix portion of the transition plan discloses the City's effort in seeking public input of the plan. All questions asked during the public comment period and public hearing will be answered and included in the appendix. The plan will be revised as deemed necessary by the ADA Coordinator, City Manager and include recommendations by our consultant.





City of Santa Fe, NM

# ADA TRANSITION PLAN

*August 30, 2011*

## Section: II

# Self-Evaluation

### Procedures and Practices

- A. Findings, Recommendations, and Model Policies
- B. Questionnaire Tool
- C. Department Responses



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## ACKNOWLEDGEMENTS

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- City Manager's Office: **Galen Buller** (former) City Manager
  - **Joyce Purley** – Emergency Preparedness Coordinator
- City Attorney's Office: **Frank D. Katz** (former) City Attorney
  - **Maureen Reed**, former Assistant City Attorney
  - **Irene Romero**, Paralegal
- Community Services Department: **A. Terrie Rodriguez** – Director
  - **Kandice Hollis** – Youth & Family Services Division, Director
  - **Lynn Hathaway** – Children & Youth Commission, Director
- Finance Department: **David Millican** (former) Director
  - **Barbara Boltrek** – Risk Management & Safety, Risk Manager
  - **Darlene Ortega** – Risk & Safety Training Coordinator
  - **Debbie Rouse** – Safety Manager
  - **Peter Ortega** – Utility Billing, Customer Service Director
  - **Joe Lujan** – ADA Coordinator
- Fire Department: **Chief Barbara Salas**
  - **Chief Mark Aragon** – SFFD, Assistant Fire Chief
- Human Resources Department: **Kristine Kuebli** (former) Director
  - **Nancy Jimenez** – Human Resources Administrator
  - **Lois Amador** – Human Resources Supervisor
- Land Use Department: **Matt O'Reilly** – Director
  - **Greg T. Smith** – Current Planning Division, Director
- Municipal Court: **Judge Ann Yalman**
  - **Arlene Sisneros** – Court Administrator
- Public Works Department: **Robert Romero** (former) Director, City Manager
  - **Fabian Chavez** – Parks Division, Director
  - **Martin Valdez** – Community Facilities Division, Director
  - **Chris Ortega** – (former) Engineering Division, Director
  - **Eric Martinez** – Roadway & Trails Engineering Division Director
  - **LeAnn S. Valdez** – Engineer Assistant
  - **Jim Montman** – Airport Manager

Additionally, the individuals listed above were especially instrumental in providing information needed to produce this report. We wish you the best of success and hope the information contained within provides you with useful guidance in creating inclusion for a rapidly growing segment of your community.

## INTRODUCTION:

Passed in 1990, the American's with Disabilities Act (ADA) is a comprehensive National Civil Rights mandate. The ADA is designed to create inclusion for persons with disabilities in every facet of American society.

The ADA contains five titles. Together they are designed to provide a comprehensive umbrella of Civil Rights protection for qualified persons with disabilities.

**Title I** addresses employment for all employers having fifteen or more staff. It requires that employers hire the candidate most qualified to perform the essential functions of the job with or without, the provision of a reasonable accommodation. Reasonable accommodations may be necessary to enable a qualified employee to perform the essential functions of their job, to compete in the employment selection process or to receive benefits and privileges comparable to other employees in the work setting. When reasonable accommodation is needed it is incumbent upon the employer to engage in an interactive process, obtaining information from the employee and other sources. At the completion of this process the employer, after giving primary consideration to the input received from the candidate or employee must select an effective accommodation if one is available. Employers are not held to providing accommodations that constitute an undue burden. An undue burden would be an accommodation that is extensive, disruptive, and unduly costly or would fundamentally alter the operation.

**Title II** holds state and local government entities accountable for ensuring, when viewed in their entirety, that all programs, services and activities are readily accessible to qualified persons with disabilities. To implement its responsibilities, a Title II entity such as the City of Santa Fe, is expected to develop an ADA Transition Plan, addressing physical access barriers and conduct a Self Evaluation to address policy and capacity building barriers that may negatively impact the receipt of services for employees and members of the public served by the City. This document summarizes the 2009-10 update to the Self Evaluation of the City of Santa Fe's policies procedures and practices.

**Title III** covers privately owned public accommodations. Within this title a very wide range of privately owned businesses are held responsible for ensuring that the goods and services they provide to the public are accessible to persons with disabilities. Thus, stores, medical clinics, recreational facilities and virtually any other entity providing goods and services to the public are expected to take affirmative steps to implement Title III requirements. Title III entities are not held to conducting a self evaluation or a transition plan as described above for public entities. However, they must engage in a program of readily achievable barrier removal. In short, this means that they must, after

considering their available resources, remove barriers that prevent persons with disabilities from receiving the benefits of their goods and services. When a Title III entity engages in new construction, renovation, or remodel the sites impacted must be brought up to the current code. Covered entities must also make accommodation as appropriate to ensure access to their goods and services.

**Title IV** covers telecommunication access, which affects persons with disabilities. Within this title each state has created a telecommunication relay service. The relay service operators manage calls from persons who are deaf and hard of hearing and ensure that persons in the hearing community are able to communicate with individuals who are deaf and hard of hearing via telephone. This is accomplished by the deaf or hard of hearing person communicating to the relay operator through a TTY (a teletype device), to the relay operator who reads the communication and voices it to the hearing caller. State relay service systems have been credited with breaking down significant walls of communication for the deaf and hard of hearing communities. Title IV also mandates that when federal funds are used to create video broadcasts that the video must be captioned.

**Title V** is often called the administrative title of the ADA. Some examples of information contained in Title V include an exemption to coverage for tobacco use. Also Title V exempts from coverage compulsive gamblers, kleptomaniacs, pyromaniacs and persons with a variety of sexual disorders.

## **DEFINITION OF DISABILITY**

The ADA has three prongs of eligibility as described below. First, if an individual has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such an impairment, or is regarded as having such an impairment, they are covered by the Act.

There is no exhaustive list of major life activities. However, they do include breathing, hearing, seeing, walking, caring for oneself, learning, reproduction and working.

### **The impact of the Americans with Disabilities Amendments Act (ADAA) of 2008**

In 2008 the ADAA was signed into law and became effective January 1, 2009. Largely a reaction to the courts narrow interpretation of the first prong of eligibility, Congress used the ADAA to instruct courts to broadly interpret the definition of disability. As a result entities and courts should not engage in an extensive analysis to determine whether or not an individual has a substantial limitation to a major life activity. Further, the ADAA requires that when examining the impact of an impairment on a major life

activity, that the analysis be conducted in what is referred to as “unmitigated status”. Simply put, this means that we would look at the individual in question and ask if they would have a substantial limitation to a major life activity, if they were not using medication, devices, or personal habits which decrease the impact of the disability on the performance of their major life activities. Therefore, if in absence of these mitigating measures there is a substantial limitation to a major life activity the individual in question would be covered by prong one of ADA eligibility requirements.

The ADAA also explicitly states that episodic conditions are covered as long as during their period of exacerbation, they result in a substantial limitation to a major life activity. ADAA also explicitly covers the functioning of major bodily systems.

The end result of this legislation is expected to increase the number of individuals who have standing under federal disability civil rights requirements.

### **DEFINING A QUALIFIED PERSON WITH A DISABILITY**

The ADA contains numerous references to the term qualified person with a disability. Thus, it becomes important to understand this concept as it has a material impact on defining who is covered by the law in any given situation. First of all, to be considered a qualified person with a disability, one must have a disability as described above. Secondly, the person must have eligibility or qualification to receive this service, such as a City residency requirement. Thus, if one had a disability as defined by prong one and met the qualifications to participate in a recreation class, i.e., residency of the City of Santa Fe, this individual would be a qualified person with a disability. Thus, the person would have a basis for a legal expectation that the City’s affected program, services and activities would be accessible to them.

In employment situations a qualified person with a disability would have a disability as described in prong one, they would meet the minimum qualifications for the job being considered and lastly would be able to perform the essential functions of the job with or without reasonable accommodations.

## METHODOLOGY

The method of conducting the Self Evaluation for the City of Santa Fe involved a team effort between City staff members and consultants of Sally Swanson Architect, Inc. After its formation, the team was assembled for ADA Title II/Self Evaluation training which was conducted by the SSA consultants. A meeting was also held with Human Resources Management to discuss the City of Santa Fe's Employment requirements as articulated in ADA Title I.

During this training, and the meetings, the purpose of ADA, the self evaluation process and information relating to the needs of persons with disabilities in service situations was conveyed. Each participating staff member was given an ADA self evaluation survey form. These forms were designed to obtain information regarding the functioning of the City as related to the ADA self evaluation scope recommended by the United States Department of Justice within its Title II Technical Assistance Manual. After completion of the Self Evaluation Survey's, SSA staff embedded the obtained information into spreadsheets summarizing the reported data. Using these summaries the Self Evaluation Report contained within this document was created. It is our hope that this document can serve as a guide to the City of Santa Fe and its residents in making changes that can enhance the inclusion of persons with disabilities in all aspects of City Government and community life. It is important to note that the findings within this document and subsequent recommendations are based solely on the information received from City staff as discussed in this methodology description.

The City of Santa Fe is covered under ADA, Title I Employment, and Title II, programs, services and activities. The ADA holds the City to making all its programs, services and activities readily accessible to and useable by qualified persons with disabilities when they, the programs, services and activities are viewed in their entirety. The Self Evaluation and Transition Plan are cornerstones to ensuring and documenting the City's good faith effort to create and maintain appropriate inclusion as mandated by the ADA.

The Title II ADA requirements can be divided into two major categories. The General Requirements mandate that covered entities with more than 50 employees shall:

- Conduct a Self Evaluation and maintain it for public inspection for three years,
- Conduct a transition plan to address physical barriers to access to programs, services and activities,
- Appoint an employee responsible for coordinating the City's ADA mandates,
- Create a grievance procedure which is disseminated broadly through the City,
- Post Notice of ADA Compliance and again disseminate it broadly through the City.

The second section of the Self Evaluation addresses requirements of access. The U.S. Department of Justice (Primary ADA enforcement agency) has suggested 13 points of program access for the Self Evaluation review. These 13 points and the general requirements were used to set the scope of the review for the City of Santa Fe's Self Evaluation.

***General Requirement Findings:***

- This project encompasses the Self Evaluation which should be vetted with persons with disabilities, adopted and implemented. It will be substantial evidence of the City of Santa Fe's good faith efforts to comply with ADA's Title II mandates.
- Sally Swanson Architects (SSA) is conducting accessibility assessments of designated City facilities which will result in the first phase of the mandated Transition plan. It is designed to address physical access barriers within high-priority City facilities.
- The City has appointed an ADA Coordinator to address compliance issues.
- A grievance procedure has been developed and appears in the City's current Transition Plan. It is recommended that this grievance procedure be more broadly disseminated within City's departments.
- No evidence of a Notice was found during this review. It is recommended that a Notice be developed and disseminated broadly to the public and all City departments.

***Access to Programs, Services and Activities Findings:***

1. Transition Plan – as discussed above the Transition Plan is being updated as a part of this project. The completed Transition Plan will be comprised of a list of barriers within the physical environment, a statement of method for mitigating barriers, a schedule for barrier mitigation and it will name a City official responsible for Transition Plan mitigation.
2. Eligibility Requirements - City staff who participated in the Self Evaluation did not identify any program eligibility requirements that would limit or exclude or tend to limit the participation of qualified persons with disabilities.
3. Communication with persons with disabilities - Information regarding the communication needs of persons with disabilities appears to be inconsistent through City departments. It is recommended that guidance be created on this topic and be made available to all City staff.
4. Provision of auxiliary aides and services such as sign language interpreters, note takers, CART services, etc were reviewed within this scope of the Self Evaluation. Again, information among the city staff is not well established regarding this required area. It is recommended that guidance be drafted for use by City staff. This guidance should contain local resources, protocols for City service authorization procedures.
5. Emergency Preparedness for persons with disabilities has become a very sensitive issue since Katrina and 911. A number of weaknesses were identified



in this area within the City of Santa Fe. It is recommended that a workgroup be established, including persons with disabilities knowledgeable in the area, representatives of Community Resources, the City, adjoining jurisdictions, the Red Cross, and other stakeholders. A comprehensive plan involving preparedness, response, recovery and mitigation should be developed which addresses the unique needs of persons with disabilities. This plan should be responsive to the risks most significant to the City of Santa Fe. The acquisition of accessible mass care shelters, durable medical equipment, back-up power generation, accessible cots, service animal procedures, sign language interpreters and other accommodations should be considered. Redundancies should be built into this contingency plan as a community wide disaster might make certain resources unavailable.

Upon completion the plan created should be tested through a community wide exercise, debriefed and revised as appropriate. It is advisable that this exercise and debriefing involve stakeholders with disabilities, as well as first responders at various levels.

6. Under this category the USDOJ suggests an examination of the manner in which persons with disabilities are portrayed in City publications. We have expanded this review to examine whether or not persons with disabilities are represented in City publications and whether City employees are aware of present day language in disabilities etiquette issues. While some individuals in City government are very aware and sensitive to the concepts described herein, others tend not to be as current regarding the politically accepted terms and language of the day.

It is recommended that a publication and language guide be created and disseminated to all City staff that has public contact on behalf of the City of Santa Fe. The latter should contain information concerning "person first language" and a list of terms that may be offensive to some persons with disabilities such as "mental retardation", "victim of", "wheelchair bound", or "handicapped". These concepts could be reinforced in training recommended within Section 12 of this report.

7. Historic preservation – When covered entities operate programs, services and activities from registered historic sites alternative historic codes can be applied. It is necessary that after the application of historic codes program access to the services offered be intact.

During the review it appeared that responsible City staff were keenly aware of these requirements and no problems were noted.

8. The USDOJ suggest we explore the determination of fundamental alteration. Qualified persons with disabilities may bring a request to the City for a policy

modification designed to make programs, services and activities accessible to them. At times, such a request may fundamentally alter the nature of the City's program. If a policy modification would result in a fundamental alternation the City is not held to making the requested policy modification.

No procedure for determining fundamental alternation was identified during this review. Having a procedure in place is advantageous to City administration, as it assists in ensuring equitable disposition of policy modification requests. A fundamental alternation determination policy should include provision for examining alternatives to the requested modification that would not result in a fundamental alternation, yet would create an appropriate level of access. Determination of fundamental alternation should be reviewed at the highest level of City government. This review is advantageous as senior management have a fuller prospective of a scope and resources of City government as a whole. As such they are better able to determine the impact of granting or denying a request.

9. Access to public meetings was reviewed in this section. Reviewers were largely unaware of how appropriate access is determined. Many reviewers had made successful modification to ensure meeting access. No significant guidance was found to assist staff in producing accessible meetings. It is recommended that at minimum a guidance document/checklist be created to support staff in this area. This also would be an advisable topic for training as noted in Section 12. Hopefully, as a result of the Transition Plan information about accessible sites can be posted for City staffs use.
10. Employment practices - The Human Resources Department submitted a comprehensive manual for review as part of the Self Evaluation process. This manual provides City staff with an appropriate understanding of ADA title I provisions as they existed before January 1, 2009. On January 1, 2009, the ADA Amendments Act took effect. The impact of the ADAA includes, but is not limited to:
  - an expectation that the first prong of ADA eligibility will be broadly interpreted;
  - that disabilities will be examined without regard to mitigating measures such as, medications, devices, or habits which decrease the impact of the disability;
  - the inclusion of episodic conditions as covered, if said conditions result in a substantial limitation to a major life activity when exacerbated;
  - conditions effecting major bodily systems, if such conditions result in a substantial limitation to a major life activity.

The ultimate result of the ADAA will be a broader coverage of workers and applicants with disabilities. As such, it is recommended that the HR manual be updated to reflect these recent changes and that supervisor and managers be trained on the requirements to which the City is now held.

11. Construction and renovation after January 26, 1992, was to be compliant with Federal Access requirements. In the review it was found that the Mayor's Committee on Disability conducts plan checks of new construction projects to identify compliance issues at the earliest point possible. No issues were noted in this area, thus no recommendations are being made.
12. Staff having public contact have a need for a wide range of disability related information in order to appropriately address the Disability Civil Rights issues that might come before them as they conduct City business. It is recommended that a variety of guidance documents be created and posted on a shared drive for City staff to access as needed. These documents could then be maintained and updated as needed by the City ADA Coordinator.

It is also advisable to have training available for

- New staff,
- Staff having public contact,
- Supervisors and managers,
- Emergency responders,
- Meeting organizers.

13. An evaluation of policies regarding former alcohol and drug users to determine that none discriminate against individuals who are no longer engaged in illegal drug use and have been through a rehabilitation drug program. ADA requires that persons who formerly engaged in the use of illegal drugs be protected from discrimination if they have been rehabilitated and no longer using drugs illegally. Only 3 of 16 responders reported having knowledge of such a policy. It is recommended that the policy be revisited, revised as needed and disseminated to responsible staff.

## **SUGGESTED POLICIES/PROCEDURES**

Below please find a number of documents that have been created to support the City of Santa Fe's efforts to create seemly inclusion for persons with disabilities throughout City government. Some of the topics can be used to formulate policies and procedures, while others may serve best as staff guidance documents. It is advisable, if possible to post all adopted material on a shared drive, accessible to all City staff. In disseminating the information in this manner, it is hoped that the City of Santa Fe staff can efficiently obtain accurate information pertinent to situations they face on duty that will support them in taking appropriate action. As such quality of service to residents and employees of the City should be enhanced and the City's legal risks should be mitigated. By their nature ADA guidance documents will change over time. It is incumbent upon the City to assign the ADA Coordinator the responsibility to monitor these documents and to update and arrange policy adjustment as necessary.

It is suggested that each of these documents be reviewed by the ADA Coordinator, the City Attorney and any other parties as appropriate prior to adoption and roll out. Upon roll out, it is advisable to create and implement a specific plan addressing both the vetting of the Self Evaluation and the capacity building efforts necessary to ensure City staff fully understands the mandates of ADA, City policies and procedures and the resources they have at their disposal.

## ***Auxiliary Aides and Services***

It is the policy of the City of Santa Fe to provide auxiliary aides and services to qualified persons with disabilities to enable them to participate in the programs, services and activities of City Government.

### **What is required?**

Title II of the ADA requires that State and Local Governments provide auxiliary aides and services to qualified persons with disabilities, when such auxiliary aides and services are necessary to ensure equal access to the programs, services and activities of the governmental entity.

### **What are auxiliary aides and services?**

Auxiliary aides and services can be a wide variety of interventions. The list below is not exhaustive. Typical supports include:

- Interpreting services for the deaf and hard of hearing;
- Assistive listening devices for the hard of hearing;
- Braille;
- Note takers for persons who's disabilities prevent them from being able to take notes in meetings;
- Information provided on audio tape;
- Real time captioning for persons who are deaf or hard of hearing and do not use sign language;
- Material available electronically in lieu of a print format;
- Material available in large print formats.

### **What steps should City staff take?**

- Make certain that meeting notices inform people that they may request auxiliary aides and services to facilitate their participation in the meeting, if such services are necessary due to a disability;
- Make certain that City publications inform the public that the publications are available in alternative format upon request;
- Ensure that staff persons who are listed as contact persons in notices about auxiliary aides and services are prepared to interact with the requestor, obtaining information regarding the nature of the request. This person also must have knowledge of the resources in the community and the City's procurement system;
- The assigned staff person should then procure the needed auxiliary aides and services and ensure that they are received appropriately by the person with the disability.

**Surcharge**

It is important to note that it is unlawful to levy a surcharge for the provision of an auxiliary aide or service. For example, if a resident is requesting copies of public documents which are normally made available at a charge of \$.25 per page, it would be unlawful to charge an additional fee to provide those documents in a Braille format. This is the case, despite the fact that providing the documents in Braille would be more costly than providing them in printed form.

## ***Service Animals***

It is the policy of the City of Santa Fe to admit service animals into all sites from which the City provides programs, activities or services.

What is required?

Title II of the ADA requires that service animals be admitted to sites which are open to the public.

What is a service animal?

A service animal can be any one of a variety of species that are specifically trained to perform a task(s) for a person with a disability that they cannot perform for themselves because of a disability. No “special” card or license is required to be carried by the owner of the service animal.

How can I tell if an animal is a service animal?

You may ask the following questions:

- Is that a service animal?
- What service does it perform for you?

What action may be taken if the service animal becomes threatening or disruptive?

- If the service animal becomes disruptive or threatening its owner may be asked to remove the animal from the premises.

It is advisable to document what has occurred, including the names and contact information of witnesses. Also, City staff should advise their supervisor and the ADA Coordinator of the incident immediately.

**Please note:** Federal regulations are pending approval which may in their final form restrict the type of species that may be classified as service animals. It is recommended that the City of Santa Fe's, ADA Coordinator monitor the status of these pending regulations closely.

## ***Reasonable Accommodation***

It is the policy of the City of Santa Fe to provide effective accommodations to qualified applicants and employees with disabilities.

What is a reasonable accommodation?

- A reasonable accommodation is an adjustment within the selection process, or the provision of auxiliary aides and services during the selection process which does not fundamentally alter the selection competition or result in a person with a disability gaining an undue advantage in the competitive process. Examples may include, but not be limited to:
  - Holding the interview in an accessible site in the event a candidate has a mobility impairment (it is a best practice to ensure that all selection activities takes place in accessible locations as the hiring authority may not be aware of the mobility impairments impacting candidates);
  - Provision of sign language interpreters for persons who are deaf or hard of hearing;
  - Provision of time and a half for persons whose selection is impacted by a learning disability.
- An adjustment in the manner in which the essential functions of a job are performed. Examples may include, but are not limited to:
  - Making the work site accessible to, and useable by the employee with the disability;
  - Schedule adjustments which may include as appropriate, telework;
  - Modification of supervisory style;
  - Acquiring or modifying equipment and devices.
- An adjustment to the provision of benefits and privileges to ensure that all staff receives benefits and privileges in an equitable manner. Examples may include, but are not limited to:
  - Making break rooms accessible;
  - Holding City sponsored social events, such as holiday parties or retirement parties in accessible locations.

## **What is a definition of a qualified person with a disability?**

A qualified person with a disability is a person who 1) meets the minimum qualifications of the position in question; 2) is able to perform the essential functions of the position with or without reasonable accommodations; 3) is a person who has a disability as defined by ADA, which states in part, a person with a disability is



- A person with a physical or mental disability that substantially limits a major life activity;
- A person with a history of a physical or mental disability that substantially limits a major life activity;
- A person who is regarded as having a physical or mental disability that substantially limits a major life activity.

Within the reasonable accommodation process the first prong noted above is most central to the issues encountered.

### **What happens when a reasonable accommodation is requested?**

Generally the employee or applicant will inform the employer of the need for reasonable accommodation. However, when the employee knows or has reason to know the applicant or employee has a disability impacting the work environment, the employer must engage in an interactive process. The interactive process is designed to identify and implement an effective reasonable accommodation. **NOTE:** *the City must determine if this process will be administered by the ADA Coordinator, the first line supervisor or both parties in collaboration with each other.* Should the City ADA Coordinator have a role in determining the accommodation, the ADA Coordinator then becomes compromised in investigating any complaint which derives from decisions that are made in the accommodation process. Therefore, it may be advisable to develop the accommodation role as a shared responsibility between HR and the first line supervisor.

### **What is the interactive process?**

The interactive process can be thought of as an interaction between the employee/applicant and the employer to address mitigating barriers to employment which are created by the disability in question. The following five steps demonstrate how the interactive process can be effective.

1. The employer becomes aware of the impact of the disability within the employment situation.
2. The employer and the employee/applicant discuss potential solutions (here medical information and resources from experts such as the job accommodation network may be employed).
3. After giving primary consideration to the employee/applicant's input the employer selects an effective reasonable accommodation.
4. The employer puts the reasonable accommodation in place in a timely manner.
5. The employer follows up to determine if the reasonable accommodation is effective.

### **When should medical information be requested?**

If medical information is needed the request should be shaped by the employer's need to know or the business necessity of the operation. For example, in most cases the employer will need to know;

- If the employee/applicant has a mental or physical disability that substantially limits a major life activity;
- If the physical or mental limitation is long term or permanent;
- How the limitation impacts the employee/applicant in the selection process, performance of essential functions of the position or in the receipt of benefits and privileges in an equitable manner.

**Note:** The determination of whether there is a substantial limitation to a major life activity must be considered in the "unmitigated status" per the ADA Amendments Act. Thus, one would examine whether there is a substantial limitation for the employee/applicant not using medication, devices or personal habits that mitigate the limitation of the disability.

### **When is a request an undue hardship?**

If a request is unduly costly, extensive, substantial, and disruptive or would fundamentally alter the nature of the operation, it may be an undue hardship for the City to provide the accommodation in question.

It is very important to note that if a decision is made based on a reasonable accommodation being unduly costly it is necessary to make that determination in conjunction with the resources of the entire City of Santa Fe rather than any sub section, program or department within the City. Outside consultation is often useful before making a negative determination.

***Reasonable Modification***

It is the policy of the City of Santa Fe to make reasonable modifications of policies to create inclusion for qualified persons with disabilities.

**What is a reasonable modification?**

A reasonable modification is an adjustment or modification of a City policy or practice in order to create access to City programs, services or activities for a qualified person with a disability. Examples would be:

- Granting a variance in building set back requirements to permit the construction of a ramp that creates access for wheel chair users;
- Assisting a person with a disability in completing forms required to receive City services;
- Exempting a person with a disability from the requirement of placing their trash can at the curb to receive trash pickup.

**When is the request for a reasonable modification an undue burden?**

If granting a request fundamentally alters the nature of the program, service or activity of the City of Santa Fe such an act may be declared an undue burden.

Before making such a determination, City staff must 1) examine whether there are other actions that can be taken to create the desired program access, 2) consult with the City ADA Coordinator, 3) consult with and get the approval of the City Attorney's office.

Standards should be in place to ensure that undue burden determinations are made in an expeditious fashion. If the requestor's initial modification cannot be granted other means of creating access must be considered. Final approval of an undue burden must be made at a high level within government as executives at this level are aware of the resources available to the City as a whole.

***Zero Tolerance Policy for Disability Harassment***

It is the policy of the City of Santa Fe to have a respectful and civil work and service environment for all employees, applicants and members of the public.

Pursuant to this policy the City will not tolerate the harassment of or jokes about persons with disabilities. Such behavior by City of Santa Fe employees may lead to disciplinary action.

Any employee having questions regarding appropriate language or etiquette related to persons with disabilities should contact the City ADA Coordinator for guidance.

**Note:** It is important to ensure that the zero tolerance policy is harmonized with any grievance or complaint process.

### ***Tips Regarding Appropriate Language and Etiquette***

Most people grew up in a time when it was perfectly acceptable to refer to a person with a disability as “handicapped”. We also thought of people as “wheelchair bound”, “a victim of”, or “suffering from”. These terms are outdated and no longer acceptable. They should not be used by City of Santa Fe staff while transacting City business.

The use of the term “handicap” conjures up a negative or demeaning connotation. “Wheelchair bound” and “suffering from” are both terms found to be objectionable as they call attention in a rather dramatic fashion to a person’s disability.

Today, we use a concept known as “person first language”. The thinking behind person first language is that a disability is merely a single characteristic of the individual’s personhood. We all have characteristics, race, gender, ethnicity, etc. A person with a disability has a characteristic of a disability. It is inappropriate to label them by that characteristic, thus calling undue attention to the disability. It is more appropriate to see the person first, thus the language talks about “a person with a disability”.

Below please find a list of outdated terms and terms which are acceptable for use in today’s business/social world.

#### **Do not Use**

#### **Preferable Terms**

Handicapped	Person with a disability
Victim of	Person with a disability
Challenged	Person with a disability
Wheelchair bound	Person with a mobility impairment
Epileptic	Person with a seizure disorder
Mentally Retarded	Person with an intellectual disability
Suffering from	Person with a disability
Special	Person with a disability
Hearing Impaired	Person who is deaf or hard of hearing

When using the services of a sign language interpreter, it is important to remember to speak directly to the person who is deaf or hard of hearing. The sign language interpreter is functioning only as a conduit of the communication and is not a part of the conversation. The code of ethics that sign language interpreters adhere to mandates strict confidentiality of communications.

When giving directions to a person who is blind or has low vision, it is very important to provide very concise information. For example, rather than saying “the restroom is over there”, one would say “the women’s rest room is 30 feet down the corridor on the right hand side”. When initiating a conversation with a person who is blind it is advisable to

identify yourself and anyone with you so that they know who they are talking with. It is also important to let the blind person know when you are leaving. This avoids the situation where the blind person will continue to talking to you after you have departed.

It is perfectly acceptable when speaking to a person who is blind to use words such as “see” or “show”. It is also acceptable to suggest to a wheel chair user that you walk to the corner deli with them to have lunch. Or in another instance, to ask a person who is deaf if they have heard from a friend lately. Attempting to avoid terms normally used in conversation will only draw attention to the persons disability and make the communication with them seem awkward or artificial.

It is permissible to ask a person with a disability if they need your assistance. They may say no, as many persons with disabilities prefer to function independently. If they say yes to your offer, your next question should be, “how may I assist you”? Taking guidance from the person with the disability will help make your efforts more effective.

When interacting with a person with a wheel chair do not lean on or touch their wheelchair. Their wheelchair is an extension of their body and part of their personal space. When possible, it is helpful to sit next to them, thus adjusting your eye level to theirs, and therefore, avoiding the difficulty inherent to them in continually looking up.

In customer service situations, speak directly to the person with the disability; never make inquiries to their companion regarding what service the person with the disability is requesting. When dining with a companion who is blind it is appropriate to orient them to their meal upon the delivery. This is done by saying, “you have an open faced sandwich on the left side of your plate with French fries on the right and your coffee is at 10:00”. This simple statement typically assists the person in creating a more comfortable dining experience.

Many people with disabilities use service animals. Never touch, distract or feed the service animal without first obtaining the permission from its owner. The service animal is working when you encounter it. Distracting it can decrease its performance and create disciplinary problems for its owner.

### ***Drug Policy***

It is the policy of the City of Santa Fe not to discriminate against former drug users who are in recovery and no longer engaged in the illegal use of drugs.

Questions concerning this policy should be directed to the City ADA Coordinator or the City Attorney's office.

## ***Notice of Compliance under ADA***

In accordance with the requirements of Title II of the Americans with Disabilities Act (ADA) of 1990, and other applicable codes, the City of Santa Fe will not discriminate against individuals on the basis of disability in its services, programs or activities.

**Employment:** The City of Santa Fe will not discriminate on the basis of disability in its hiring or employment practices, as well as ADA Title I including the regulations promulgated by the Equal Employment Opportunity Commission under Title I of the ADA.

**Effective Communication:** The City of Santa Fe will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities, including sign language interpreters, documents in Braille and other ways of making information and communication accessible to people who have speech, hearing or vision impairments so they can participate equally in the City programs, services and activities.

**Modification to Policies and Procedures:** The City of Santa Fe will make reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services and activities to the maximum extent feasible. For example, individuals with service animals behaving within applicable standards are welcome in City offices and facilities, even when pets are generally prohibited.

Anyone who requires auxiliary aides and services for effective communication, or a modification of policies or procedures to participate in a program, service or activity of the City of Santa Fe should communicate with the Department contact as soon as possible, but no later than 48 hours before the scheduled event.

Neither the ADA, nor state laws require the City of Santa Fe to take action that would fundamentally alter the nature of its programs, activities or services or impose an undue financial or administrative burden. Complaints that a program, activity or service of the City of Santa Fe is not accessible should be directed to the ADA Coordinator. (ADA Coordinator's name and contact info inserted here)

The City of Santa Fe will not place a surcharge on a particular individual with a disability or a group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modification of policy to create access.



*NOTE: Prior to implementing this policy, the City may wish to adjust the “48 hour notification period”, insert the name and contact information of the ADA Coordinator and develop a dissemination plan. The notification of compliance should be widely disseminated through City Government. The U.S. Department of Justice suggests periodic publication of the notice in local newspapers and other forms of dissemination that would reach the constituent base of the City.*

## ***Grievance Procedure under ADA***

This grievance procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone wishing to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs or benefits by the City of Santa Fe. The City of Santa Fe's Disability Discrimination Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of the complainant and location, date and a description of the problem(s). Alternative means of filing a complaint, such as personal interviews or tape recording the complaint, are available to persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to: *(insert ADA Coordinator's name and contact info)*

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or the designee will schedule a meeting with the complainant to discuss the complaint and possible resolutions. After an investigation and review, the ADA Coordinator will respond in writing, and where appropriate, in a format accessible to the complainant. The response will explain his/her position on the issue and offer options for substantive resolution of the complaint.

If the response by ADA Coordinator does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the City Manager.

After receiving the appeal, the City Manager or the designee will review the appeal and the ADA Coordinator finding. Within a reasonable period of 30 calendar days, after a review, the City Manager or the designee will respond in writing, and, where appropriate in a format that is accessible to the complainant, with a final resolution to the complaint.

*NOTE: The grievance procedure should be disseminated through all City departments and appear within the City's Website.*

CITY OF SANTA FE

# Self Evaluation Questionnaire

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## SURVEY RESPONDENT INFORMATION

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City Department and/or Division:



Name & Designation:



Email Address & Telephone #:



Survey Completion Date:

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## INTRODUCTION

### Instructions for completion of the Self Evaluation questionnaire

The Americans with Disabilities Act (ADA) requires that all programs offered by public entities be accessible to and useable by persons with disabilities when the programs are viewed in their entirety. Key ADA citations are referenced at the end of this questionnaire for your information. The purpose of this checklist is to provide the teams or individuals, reviewing their department's policies, practices and procedures, a structure for evaluating the programs, services and activities therein as measured against the aforementioned requirement. Programs vary from department to department and their application frequently varies within any given department/division. For this reason no program survey checklist is perfect. One of the valuable contributions you can make as a reviewer is to add items to the checklist, which you believe are pertinent to your programs' functioning and the requirements of the ADA.

We ask that you evaluate policies which your program has responsibility for. For example, HR Staff would be primarily responsible for the checklist items found in Section 10 (Employment). However, it is recommended that all supervisors review this section and flag questions or make comments as necessary. You may also find that some sections are not pertinent to your City department as a whole. This would be the case if you do not conduct business from any historic sites and, therefore would not be responsible for completing Section 7.

As you find areas of deficiencies, please note them and include your suggestions as to how they may be remediated. Suggestions are most helpful when they note the deficiency, the proposed method of mitigation, the persons responsible and a suggested timeline as appropriate. Additionally, you may find areas where practices are inconsistent with policy. Should that occur, please make note of that, as this may be a staff training issue.

If when going through the survey tool you find yourself unable to respond to certain items that you believe are pertinent, please make note of those items so that appropriate consultation and guidance can be provided. If you believe the attachment of a given policy to the survey form will assist in communicating the structure of the policy, please submit the policy with this survey tool. Please advise your teams responding to the questionnaire on behalf of their respective departments/divisions to submit the completed forms via email by \_\_\_\_\_, 2009.

Finally, we thank you for the time and energy you are investing in evaluating your program function, in order that it can meet the legal mandates of the Americans with Disabilities Act and State Law as appropriate. The end result will also lead us to discrimination free program services delivered in the most integrated setting possible. Should you have any questions or concerns in responding to this questionnaire, please do not hesitate to contact us via email at [mparavagna@swanarch.com](mailto:mparavagna@swanarch.com) and [arfaraz@swanarch.com](mailto:arfaraz@swanarch.com)

## **ADMINISTRATIVE REQUIREMENTS**

1. Does your City have 50 or more employees?
2. Are you aware of a grievance procedure that has been developed to resolve ADA related issues within your department/division (or City-wide)?
3. How is the grievance procedure made available to stakeholders relating to your department/division?
4. Does the grievance procedure contain time lines, which facilitate a timely resolution of the complaint?
5. Is the complainant informed of the disposition of the grievance? Please state how.
6. If the complainant needs assistance because of his/her disability in filing the grievance, is such assistance made available? If yes, how is information regarding this support service made available to the public?

7. Does the designated Coordinator of the ADA/504 efforts have ready access to Senior Management? Is information regarding this person's identity readily available to staff and constituents? If yes, how is this information disseminated?
8. A review of physical access concerning all sites from which your department/division provides programs, services and activities may be conducted. The transition plan resulting from this review will contain:
  - a. A list of all physical barriers
  - b. The method to be used to mitigate the barrier
  - c. A time line for barrier mitigation
  - d. The person responsible for administering the transition plan

Please provide a list of facilities/addresses with public access to programs, services and activities offered by your department/division. Please provide additional comments and/or concerns, if any.

9. The Building department would potentially track improvements made through maintenance, remodel or other significant modifications of properties, which will enhance physical accessibility. Please provide your comments and/or concerns, if any.
10. Persons with disabilities and other interested stakeholders will be provided an opportunity to participate in the development of the transition plan. Please provide your comments and/or concerns, if any.

11. The City's transition plan is currently being updated. Please provide your comments and/or concerns, if any.

12. Are you familiar with a self evaluation examining policies, practices and procedures conducted at an earlier date?

13. Have the changes called for in the previous self evaluation plan been made?

14. Have new policies or programs been initiated since the completion of the previous self evaluation plan?

15. Were persons with disabilities and interested stakeholders consulted during the development of the previous self evaluation plan?



16. Has your Division, Department and/or Program provided notice of its non-discrimination policy? If yes, please describe how the notice was disseminated.
17. Are policies in place that prohibit levying surcharges for the provision of auxiliary aides and services, i.e. readers, note takers, sign language interpreters, etc.? Please attach the policy.
18. Is the ADA coordinator and emergency services personnel in communication on an ongoing basis concerning emergency management?

NOTE: The US Department of Justice recommends the periodic publication of ADA notice, the use of TV/Radio, internet and other system-wide publications.

## PHYSICAL ACCESS REQUIREMENTS

### ***I. A public entity must examine each program to determine whether any physical barriers to access exist.***

- A. Identify steps to make programs physically accessible, i.e. restrooms in the area are accessible, doorways and paths into and around public offices and meeting rooms are wide enough for wheelchairs, etc. when viewed in their entirety. Please provide any comments or concerns, if any.
- B. Structural changes are to be reported to the Building department and included in the overall Transition Plan for the City. Please provide any comments and/or concerns, if any.
- C. Has the placement of furniture been considered as a potential barrier?
  - 1. Is the use of furnishings which make it difficult or impossible for wheelchair users to pass through a given space avoided?
  - 2. Are waiting rooms over-furnished, thus preventing wheelchair users from having a place to be when waiting for appointments?
  - 3. Are bulletin boards and brochure racks too high to be used by persons with disabilities?
  - 4. Are items placed in areas immediately adjacent to the latch side of doorways in the pull direction?

**II. *Review policies and practices to determine if any exclude or limit participation of individuals with disabilities in its programs, activities, or services.***

- A. Modify policies or practices.
- B. Identify policy modifications to be implemented or submit justifications for those policies or practices which cannot be modified.

Example:

Can a blind person vote with the same degree of privacy and independence afforded sighted individuals?

**Questions:**

1. Are program eligibility requirements minimal?
2. Is each program eligibility requirement consistent with the business necessity of program administration? Would the removal of the requirement lead to a compromise of the program's functioning?
3. Are persons with disabilities receiving services provided in an integrated setting? If no, please discuss the program's service model.
4. Do services provided through a third party contractor prohibit discrimination based on disability?
5. What methods could a complainant use to resolve an access issue related to a contract service provider?
6. Are policies in place that prohibit levying surcharges for the provision of auxiliary aides and services, i.e. readers, note takers, sign language interpreters, etc.? Please attach the policy.

7. Has your Division, Department and/or Program provided notice of its non-discrimination policy? If yes, please describe how the notice was disseminated.

**Law Enforcement:**

8. Has the US Department of Justice Role Call training videos been utilized to orient sworn officers to the appropriate interaction with persons with disabilities in law enforcement situations?
9. Are sign language interpreters available to support officers in public interactions?
10. Are TTY communication systems available on emergency telephone lines?
11. Has staff been trained in the appropriate use of TTYs? If yes, when was the last training date?
12. Is TTY training a part of the orientation for dispatch staff?

**III. *Review policies to ensure effective communication systems exists with applicants, participants, staff and members of the public, particularly individuals with disabilities.***

- A. Telephone communication
- B. Telephone emergency services
- C. TTY (Teletypewriter)

**Questions:**

1. How do persons who are deaf, hard of hearing or have a speech impairment communicate over the telephone with

(programs, services or activities offered by) your Division and/or Department?

2. If emergency response is part of your program what is the system for persons noted above to obtain emergency services?
3. When was the last time staff was trained in the use of your communication system for this population?
4. Are your web services accessible to persons who are blind or have low vision or learning disabilities?
5. Has the US Department of Justice guidance regarding internet access been reviewed and used within your online programs?
6. Are forms available on your website for the public to complete? If yes, have these forms been tested by individuals who use screen readers?
7. Do you use any touch screen systems when providing public service? If yes, please discuss how the services provided through this system are accessible for persons with visual impairment?
8. Do publications created by your division/department contain notice that they are available in alternative format upon request?
9. Is there a procedure for all staff having public contact regarding obtaining publications in alternative format when requested?

**IV. *Review policies to ensure provisions to secure services or equipment for:***

- A. Readers for individuals with visual impairments;
- B. Interpreters for persons with hearing impairments; or
- C. A staff member available to take notes for an individual with a physical impairment

**Questions:**

1. Does your Division and/or Department provide auxiliary aides and services to persons with disabilities, to ensure equal program access?
2. Have resources been identified for the procurement of the following auxiliary aides and services:
  - Sign language interpreter?
  - Real time Captioner?
  - Note taker?
  - Braille?
  - Large Print?
  - Audio Tape?
  - Assistive listening devices?
  - Fragrance-free areas?
  - Air purifiers?

3. Are staff who have public contact aware of the procedures of your Division and/or Department for securing resources in a timely manner to provide auxiliary aides and services?
4. Do all public meeting notices contain information relative to how auxiliary aides and services can be obtained?
5. Are videos purchased by your Division and/or Department always purchased with captioning included?

**V. *A review of procedures to evacuate individuals during an emergency. This may involve:***

- A. Installation of visual and audible warnings signals and special procedures for assisting individuals with disabilities from a facility during an emergency.
- B. Using the EEOC guidance which was disseminated after 9/11 regarding identifying employees who have special needs in the event of an emergency.

**Questions:**

1. Is there an emergency evacuation plan for every site controlled by your Division and/or Department?
2. When was the last emergency drill?
3. Was a debriefing held after the drill to examine the effectiveness of the emergency response?
4. Did this debriefing include the provision of evacuation for employees and visitors with disabilities?
5. Has the EEOC guidance issued after 9-11 been used as a tool to identify staff that may need accommodation during an emergency?

6. After staff discloses the need for assistance during an emergency is the interactive process initiated?
7. Who is responsible for coordinating this process?
8. Is the ADA coordinator and safety personnel in communication on an ongoing basis concerning emergency management?
9. When was the last planning session held?
10. If emergency equipment has been purchased how frequently is emergency staff trained in its appropriate utilization?
11. How is emergency management equipment maintained?
12. Where in your building is emergency management equipment stored?
13. Have evacuations in your building included the use of emergency evacuation equipment and persons with disabilities? If not, please explain.
14. If emergency evacuation chairs are used in stairwells have they been tested to ensure that they can navigate corners within the stairwells without getting jammed?
15. Have provisions been made to ensure the stairwell can be utilized by emergency evacuation chairs, ambulatory building occupants and first responders simultaneously?
16. If it is necessary to reuse an emergency evacuation chair, what are the plans for the first person who is evacuated from the site regarding where they will be after the chair is taken back to the building?



17. Have first responders been consulted concerning your building's plan for emergency management of persons with disabilities?
18. Have persons with disabilities in your building been informed of your emergency management plan?
19. If a buddy system is used for supportive persons with disabilities in an emergency please describe the system and its backups.
20. Is a system in place to shut down the HVAC system in the event hazardous chemical discharges occur outside the building?
21. If an area of safe refuge is used please describe how the communication system between this area and the command post is handled. Would this communication system be effective for persons who are deaf or hard of hearing?
22. Does the command post have the capacity to communicate with first responders while they are in route to your building?
23. Is there a system in place to account for all personnel and visitors after the building has been evacuated?
24. Are individuals with visual impairments assisted in examining their immediate work area in the event of a bomb threat?
25. Would the facility (or part thereof) housing your program be used as a Mass Care Shelter in the event of a communitywide disaster?

26. Have arrangements been made to obtain medications and durable medical supplies during a community-wide event?

**VI. *A review of written and audio-visual materials to ensure that individuals with disabilities are not portrayed in an offensive or demeaning manner.***

**Questions:**

1. Has a review of publications and audio visual material of your Divisions and/or Departments been made to ensure that persons with disabilities are not viewed in an offensive or demeaning manner?
2. Has this review included an examination of language to ensure that:
  - First person language is used?
  - Offensive terms such as “handicapped”, “suffering from”, “victim of”, etc are not used?
3. Has the review ensured that the disabled community is represented by depicting a variety of disabilities within the publications and audio-visual materials of your Division/Department?

**VII. *If Division and/or Department operates historic preservation programs, review policies to ensure priority is given to methods that provide physical access.***

**Questions:**

1. Does the City operate a program in a site that is listed on the National Historic Registry, a state historic registry or a local government historic registry? If yes, is there an accessible

route from the arrival point to the entrance of the program location?

2. If the standard ramp slope was not feasible, has the historic standard been used to evaluate the ramp slope?
3. Is there an accessible route into the site (may not be the same entrance used by the general public)?
4. Is there at least one accessible toilet facility (maybe unisex)?

**Note:** *Accessible routes are only required at the level of entrance.*

*The program contained within the site must be accessible to and useable by persons with disabilities, i.e. if it is a historic library building, persons with disabilities must be able to participate in all phases of the program provided therein.*

**VIII. A review of policies to ensure that decisions concerning a fundamental alteration of a program, activity, or service is made properly and expeditiously.**

**Questions:**

1. Does your Division and/or Department have a policy and procedure to ensure that decisions made claiming fundamental alteration, hardships are reviewed in a timely fashion? If yes, please attach this policy.

**IX. Review policies and procedures to ensure that individuals with mobility impairments are provided access to public meetings and events.**

**Questions:**

1. Are formal or informal access surveys conducted within sites used for public meetings, training or other events?
2. Who conducts these site surveys?

3. What survey tools do they use to evaluate the site in question?
4. What training have they had in this subject matter?
5. What action is taken when findings concerning accessibility are identified?
6. Do the surveys include evaluations of access to City facilities to which school field trips are organized?

**Note:** *These standards and questions are also applicable to emergency shelters and disaster recovery centers.*

**X. A review of employment practices to ensure they comply with other applicable nondiscrimination requirements – Section 504 of the Rehabilitation Act and the ADA regulation issued by the Equal Employment Opportunity Commission (See Employment Checklist)**

**Questions:**

**Note:** *It is recommended that employment checklist be completed by the HR department*

1. Are openings advertised through organizations which have a disability constituency, i.e. the Department of Rehabilitation, Independent Living Centers, One Stop Service Centers, and other disability based community organizations?
2. Are essential and marginal functions of each position defined before advertising?
3. Is information regarding openings available to perspective candidates in alternative format upon request?

4. Do job bulletins announcing openings contain statements regarding the City's non discrimination policy concerning persons with disabilities?
5. Do advertisements inform potential applicants that reasonable accommodation may be provided as needed and appropriate during the selection process?
6. Are selection activities planned around evaluating the candidate's ability to perform the essential function of the job in question?
7. Do candidates know in advance the types of activities they will be expected to engage in during the selection process? For example, interviews, writing exercise or inbox exercise?
8. Have interview-panel members been trained in disability etiquette and allowable selection question formation?
9. Are all selection activities conducted in accessible locations?
10. Are selection sites adjacent to public transportation routes when possible?
11. Is there a policy prohibiting supervisors and managers from making any employment decision based on disability?
12. Is there a reasonable accommodation policy in place, which can be utilized during selection, provision of benefits and privileges, and to enable employees to perform essential functions of their positions?

13. Is the reasonable accommodation policy readily accessible to potential candidates and staff?
14. Is assistance available for persons who may, because of their disability, be unable to independently fill out or complete the necessary forms for reasonable accommodation?
15. Is the reasonable accommodation process based on the ADA or the Rehab Act of 1973?
16. What are the criteria for eligibility for reasonable accommodation?
17. Are disabilities evaluated in the unmitigated status?
18. Do policies exist that coordinate the reasonable accommodation process with Worker's Compensation?
19. Does the reasonable accommodation process require a multiple step interactive process?
20. Have persons responsible for administering the reasonable accommodation process been trained to facilitate the interaction noted in the question above?
21. Are medical inquiries made only when necessary and only when job related and consistent with business necessity?
22. Is all medical information stored in a secure file, separate from the official personnel file?
23. Is there a policy in effect prohibiting the use of information regarding existing leave balances in the selection process?

24. Have hiring supervisors been trained not to ask questions about or leading to information about person's disability during interviews or reference checks?
25. Is there a system in place to transfer a person with a disability into a vacant position if necessary, during the reasonable accommodation process? If yes, is there a specific length of time prescribed in which a vacant position is sought?
26. Does the search for vacant positions only include positions from within the department the person is employed by, or is it institution-wide?
27. When a vacant position is identified is there a prohibition against requiring that the person receiving the reasonable accommodation compete for the assignment?
28. Has reasonable accommodation been considered during planning for emergency management in all sites from which the City conducts programs, services and activities?
29. Has the EEOC Guidance memo used to assist employers in identifying reasonable accommodation needs during emergency evacuation of employees been used?
30. Please discuss how confidentiality is maintained for all reasonable accommodation requests.
31. When equipment is purchased for reasonable accommodation is the employees' names used on purchasing documents?
32. If reasonable accommodation is denied is the case reviewed prior to issuance of the denial decision?

33. Is there an internal appeal process to address reasonable accommodation disputes?
34. How often are duty statements reviewed and updated?
35. Does this review include documenting essential functions?
36. Is a requested reasonable accommodation always in place/resolved prior to the end of employee's probation?
37. Is notice posted regarding the availability of the reasonable accommodation program?
38. If drug testing is used, have the labs conducting the tests, been informed that they are not to report the use of prescription medication?
39. Is a policy disseminated annually to all staff putting them on notice that there is a zero tolerance for disability discrimination and/or harassment?
40. If direct threat is documented and will affect an employee or applicant's position is it reviewed prior to decision implementation?
41. Are personal service assistants used as readers, interpreters or drivers as a form of reasonable accommodation? If yes, is there a consistent policy addressing support services, such as, feeding, toileting, or tracheotomy tube cleaning?
42. What system is in place to keep HR, civil rights, legal counsel and managers and supervisor current with the developments and disability employment law?



43. Has staff been trained in the determination of undue burden?

44. When undue burden decisions are reached are they reviewed prior to the issuance of the decision?

*Name of respondent (if different from cover page):*

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*Email Address and Telephone Number:*

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*Survey Completion Date:*

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***XI. Review building and construction policies to ensure new facilities or alterations after January 26, 1992, conform to Title II Standards and Regulations and the New Mexico State Building Code.***

**Questions:**

1. Is policy in place to ensure that facilities obtained after January 26, 1992 conform to ADA access standards and the prevailing version of the State Building Code?
2. Does this policy pertain to facility remodels?
3. Does this policy pertain to new construction?
4. Does this policy pertain to new leases and lease renewals?
5. Is there a policy in place to ensure that facilities are not furnished or equipped in a manner that would create barriers to access? If yes, please provide policy.
6. Are all projects in which facility improvements are made updated in the Transition Plan document/database?
7. Have staff responsible for acquiring new space or new leases been trained relative to access requirements?
8. Has your Division and/or Department received any complaints concerning the access described within this requirement? If yes, what was the content and disposition of that complaint?
9. Does your facility operation include a policy designed to maintain in operable working condition accessible features of facilities and equipment that are required to

be accessible to and usable by persons with disabilities?

Note: Isolated or temporary interruptions in service or access due to maintenance or repairs are permitted.

***XII. Ensure that employees are familiar with policies and practices for the full participation of individuals with disabilities. If appropriate, provide training to employees.***

**Questions:**

1. Has training for staff been provided to ensure a thorough understanding of the City's (including your Division and/or Department) disability civil rights responsibilities and disability etiquette?
2. How often is this training conducted?
3. What are the objectives of the training?
4. Is the training incorporated in your new employee academy?

***XIII. If a Division and/or Department limits or denies participation based on drug usage, make sure practices do not discriminate against former drug users, as opposed to individuals currently engaged in illegal use of drugs.***

**Questions**

1. Have policies regarding illegal drug usage been reviewed to ensure that they do not discriminate against former drug and alcohol users?

*Name of Division Head under the direction of whom survey was completed:*

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*Email Address and Telephone Number:*

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*Survey Review Date:*

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**SUMMARY – 28 Code of Federal Regulations;  
Part 35 (Title II, Department of Justice) <http://www.ada.gov/reg2.html>**

**Non-discrimination on the basis of disability in State and Local  
Government services**

Title II covers all activities of State and local governments regardless of the entity's size or receipt of Federal funding. Title II requires public entities, such as the City of Santa Fe, give people with disabilities an equal opportunity to benefit from all of its programs, services and activities.

The City is required to follow specific architectural standards in the new construction and alteration of its buildings. Furthermore, the City must relocate programs or alternatively provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. The City is not required to take actions that would result in undue financial and administrative burdens. However, the City is required to make reasonable modifications to policies, practices and procedures, where necessary, to avoid discrimination, unless the City can demonstrate that doing so would fundamentally alter the nature of the service, program or activity being provided.

**Key Citations**

**Sub Part A – General**

35.105 – Requirement for Self Evaluation;

35.106 – Requires Posting Notice of ADA compliance;

35.107 – Requires the Designation of Employee Responsible for Coordination of ADA Implementation Activities;

**Sub Part B – General Requirements**

35.130 – General Prohibition Against Discrimination Against Qualified Persons with Disabilities;

35.131 – The Act's application to people who use drugs illegally;

35.133 – Requirement to maintain accessible features;

35.134 – Prohibition against retaliation or coercion;

35.135 – Clarification that personal services and devices are not required;

**Subpart C Employment**

35.140 – Employment cross references with 29CFR part 1630;

**Sub Part D. Program Accessibility**

35.150 - Adopts the program accessibility concept found in Section 504 of the Rehab Act of 1973;

35.151 – Requires New Construction and Alterations meet accessibility requirements;

**Sub Part E. Communications**

35.160(d)(1) – Requirement of the Provision of Auxiliary Aides and Services;

35.161 – TDD Requirement;

35.162 – Telephone Emergency Services;

35.162 – Information Signage Availability;