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CITY OF ALBUQUERQUE**

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REPORT OF INSPECTION

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SUBJECT: Inspection of American with Disabilities Act Compliance by City of Albuquerque

STATUS: Closed

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Executive Summary

The Office of Inspector General (OIG) for the City of Albuquerque (COA), New Mexico (NM), conducted an inspection of the City's compliance with the Americans with Disabilities Act (ADA). The purpose was to gain an understanding of the City's compliance and to share the results of this inspection with key leaders in City government, as well as with members of the community.

Unfortunately, due to severe resource limitations and other priority matters, this effort took six months. However, the timing worked out since the City's draft update to the transition plan was not released until October 2017, which allowed some information of that update to be included in this report.

The approach to this inspection was to meet with members of the ADA Advisory Council (ADAAC), the Executive Director of the New Mexico Commission for the Blind (NMCB), the Executive Director and members of the New Mexico Commission for the Deaf and Hard of Hearing, as well as other advocates for the disabled community. Additionally, several excursions were taken through various neighborhoods in all parts of the City to assess compliance violations with sidewalks and street corners. To exemplify the hazards associated with non-compliance, there are various images included in this report to depict the violation. In terms of infrastructure, these include obstructions on sidewalks, severely buckled sidewalks, a lack of ramps, and other examples of hazards that should be a public health and safety concern.

While most people think of buckled sidewalks and a lack of ramps as ADA violations, there are numerous other violations that the abled bodied community may not think about, to include technology violations, access ways to the Bosque, parking spaces, braille signs, etc. The City fails to comply with ADA requirements in many of these areas.

As addressed in the report, this inspection focused primarily on the ADA, but there are other federal statutes and regulations that also serve to protect the civil rights of persons with disabilities. These are addressed to a greater degree in the report.

The detailed inspection disclosed that there are numerous violations – perhaps thousands – of the ADA and other regulations. This is based on the research done for the City's updated transition plan. It should be noted here too that the transition plan is narrow in scope – it only addresses violations pertaining to a lack of curb ramps and sidewalks. The ADA is much broader, and includes all City facilities, transit, technology, open spaces, etc.

Finally, the report concludes with the Inspector General comments addressing the fact that the ADA requirements are to protect the Civil Rights of Americans. Unfortunately, some believe the ADA requirements are akin to “code enforcement” – this is just wrong. Some also believe the ADA was an “unfunded mandate” from Congress – this too is just wrong. Just as Congress didn't fund cities to comply with the Civil Rights Act of 1964, it didn't fund cities to comply with the ADA. This is about City leadership making ADA compliance a top priority and listening to the disabled community when making decisions about future capital improvement projects. The City is at risk for civil lawsuits and the possibility of a DOJ investigation.

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Introduction:

The purpose of this report is to document an inspection conducted by the City of Albuquerque (COA) Office of the Inspector General over an approximate six-month period, of the City's compliance with the Americans with Disabilities Act (ADA). The reason for the lengthy time to complete this inspection was based on limited staffing resources and other priority matters. The inspection was not intended to be a 100% comprehensive assessment of every violation, but rather to take a "snap shot" of exemplifying violations and challenges that exist within the City, as well as to call out successes that highlight what the City is doing right.

The report should provide sufficient information to make observations and assessments important for COA's Governing Body and Mayor's Administration to consider the priorities of fund appropriations to ensure the City is fully compliant with the ADA, and ideally with other acts that protect the Civil Rights of all Americans.

The purpose of the ADA is to "prohibit discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of TDD/telephone relay services."¹ In essence, this act is intended to ensure that all people have equal access to the same facilities and services, and in this case, that means not only in COA facilities, but also to all City services and in public right of ways. The ADA provides civil rights protections, along with the Rehabilitation Act of 1973 (RA) and the Civil Rights Act of 1964 (CRA). The ADA was passed in 1990 and amended in 2008.

In addition to the ADA, the RA, and the CRA, there are other protections of persons with disabilities, to include, the Telecommunications Act, the Fair Housing Act, the Air Carrier Access Act, the Voting Accessibility for the Elderly and Handicapped Act, the National Voter Registration Act, the Civil Rights of Institutionalized Persons Act, the Individuals with Disabilities Education Act, and the Architectural Barriers Act (ABA).

Section 504 of the RA, is an example of other legislation that protects disabled persons, but is not within the scope of this report. Specifically, 29 USC § 794 in part states: "No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..."

This inspection of the COA's adherence to the ADA requirements was conducted based upon multiple concerns expressed by the Albuquerque ADA community. Specifically, concerns indicated that COA did not comply with numerous accessibility requirements.

Title II of the ADA pertains to State and Local government programs and services. Title II has two subtitles which are Subtitle A, which covers discrimination against covered individuals in areas of services, programs and activities of the government. Subtitle B addresses public transportation.

Due to the resource limitations mentioned above, this review specifically focused on only a few aspects of the Act. The categories were chosen for their impact on general public health & safety, as well as equal access to important programs. The OIG conducted limited inspections

¹ https://www.ada.gov/2010_regs.htm, accessed October 17, 2017

of public areas and City facilities to do a sampling of ADA violations; the inspections were not exhaustive and based on historical inspections, there appears to be violations potentially numbered in the thousands.

OIG also coordinated with the City's Human Rights Office, Department of Municipal Development, Department of Innovation & Technology and the Transit Department. Each of these offices was cooperative and made information available for this review. The OIG appreciates this support.

Background:

The United States Congress passed legislation in 1990 known as "Americans with Disabilities Act of 1990," (42 USC Chapter 126) which was implemented in 1992, and required Federal, State and Municipal governments to fully comply with the law within three years of enactment.

There has also been historical questions with regard to funding that should be used to make the needed structural changes to comply with not only the ADA, but also other federal statutes and regulations that serve to protect the civil rights of the disabled community. The ADA does not provide funding to states and municipalities, but instead require the states and municipalities to use their funds to comply with requirements.

ADA Title II has two subtitles – Subtitle A and B. Subtitle A pertains to the protection of "...qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities...including those that do not receive Federal financial assistance."²

Subtitle B pertains to "...public transportation entities that receive Federal financial assistance. Also it extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance."³

The ADA addresses service animals, stating they provide invaluable assistance to people with disabilities in a myriad of ways. The ADA requires local government agencies that provide goods and services to the public to make "reasonable modifications" in policies, practices, or procedures when necessary to accommodate people with disabilities.⁴

Perhaps a most prominent issue addresses sidewalks, street crossings, and other elements in the public right-of-way, which can pose challenges to accessibility. The Board's ADA and ABA Accessibility Guidelines focus mainly on facilities on sites. While they address certain features common to public sidewalks, such as curb ramps, further guidance is necessary to address conditions and constraints unique to public rights-of-way.

The Board is developing new guidelines for public rights-of-way that will address various issues, including access for blind pedestrians at street crossings, wheelchair access to on-street parking, and various constraints posed by space limitations, roadway design practices, slope, and terrain.

² The Americans with Disabilities Act, Title II Technical Assistance Manual, Section II-1.1000, Published by Civil Rights Division, United States Department of Justice. <https://www.ada.gov/taman2.html>

³ Id

⁴ U.S. Department of Justice, Civil Rights Division, "Frequently Asked Questions about Service Animals and the ADA." https://www.ada.gov/regs2010/service_animal_qa.pdf

The new guidelines will cover pedestrian access to sidewalks and streets, including crosswalks, curb ramps, street furnishings, pedestrian signals, parking, and other components of public rights-of-way. The Board’s aim in developing these guidelines is to ensure that access for persons with disabilities is provided wherever a pedestrian way is newly built or altered, and that the same degree of convenience, connection, and safety afforded the public generally is available to pedestrians with disabilities. Once these guidelines are adopted by the Department of Justice (DOJ), they will become enforceable standards under title II of the ADA.⁵

The ADA includes many other requirements that pertain to technology, facilities and equal access to services that are provided all abled bodied citizens.

Scope and Methodology

The inspection focused on the historical actions taken by the City to identify and correct existing violations, as well as the current status and violations. There were two previous assessments that were done by the City, in addition to the recently completed review which is in current documented in a draft report (pending public comment). Additionally, a brief review of the Federal statutes and the practices of some Cities that are fully compliant, were also conducted to better understand the Federal requirements and how “successful” cities were able to become fully compliant.

The inspection included visits to areas within all areas of the City to document apparent ADA violations photographically, as well as other City maintained facilities and spaces. This was accomplished only to provide examples that there are many violations that need correcting and not intended to duplicate or follow up on previous formal inspections and assessments done in 1994 and 2009 and the draft report for 2017. While not scientific, there appeared to be more violations in certain areas of the City; while this could have been just an impression, it seems more likely that these areas of the City are more neglected and perhaps not higher in prioritization—hopefully the new assessment will prioritize areas that are in greatest need of corrections. From a Civil Rights perspective, if true, this would not only violate the ADA Act, but might also question whether certain ADA violations are prioritized based upon other demographics, such as social-economic considerations of the residents in those areas.

The inspection also addresses the fact that DOJ imposed sanctions on cities that are not compliant. Just as the COA has a Court Approved Settlement agreement with regard to the Albuquerque Police Department (APD), there are other cities that have consent decrees with the DOJ for non-ADA compliance – another violation of Civil Rights. The purpose of including these was to raise awareness to the risk of a DOJ review and possible legal action. Examples of these cities include:

- Gallup, NM
- Santa Fe, NM
- Taos, NM

Additionally, there are brief references to cities that are considered compliant cities and which could be looked to for examples of how to become compliant. The purpose of including these

⁵ <https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way>
accessed October 17, 2017

cities to demonstrate that while correcting deficiencies and violations might seem overwhelming, it is the right thing to do and can be done with the appropriate prioritization.

While much of the inspection has focused on physical violations, such as street corners and obstructed pathways, other areas that need attention include accessibility to public restrooms on City property, transportation services, and even accessibility to use computer based systems, such as job applications.

Meetings and Interviews:

Meetings and interviews were held with several individuals as private citizens or representing organizations to gain perspective from people who were either most personally impacted by living with disabilities in the COA environment, had specific knowledge or expertise regarding certain areas of the ADA or the City's compliance with the ADA (and other Federal requirements), or had both experience and knowledge. The following is a list of these people:

- Karen J. Cushnyr, Chair, ADA Advisory Council (ADAAC), COA
- Terri O'Hare, Secretary, ADAAC
- Art Schreiber, Chairman NM Commission for the Blind (NMCB) (met as a private citizen)
- Curtis Chong, Manager of Assistive Technology, NMCB (met as private citizen)
- Greg Trapp, JD, Executive Director, NMCB
- Bruce Rizzieri, Director, Transit Department, COA
- G. Nathan Gomme, Executive Director, NM Commission for the Deaf and Hard of Hearing (NMCDHH)
- Corina Gutiérrez, Director of Community Advocacy, NMCDHH
- Cheryl Padilla, Community Advocacy Specialist, NMCDHH
- Roger Robb, Training and Development, NMCDHH
- Richard Bailey, Service Coordinator, NMCDHH
- Stephen O. Frazier, Chair, Loop NM Committee (LNMC)
- Mary Clark, President, Albuquerque Chapter, Hearing Loss Association of America (HLAA)

Additionally, Melissa Lozoya, Acting Director, Department of Municipal Development (DMD), made available the 2017 draft update to the City's Transition Plan (which only pertains to the City's infrastructure).

Unidentified Disabled Citizen:

During the inspection and photographing of a street where there were several non-compliant intersections without ramps, an individual was traveling in an electric wheel chair on the street due to inaccessible sidewalks. She appeared to have significant physical and communication impairments, but was able to state that there were many problems in her area which prevented her from traveling on sidewalks. She was on her way back home from the store, where she had purchased a few items that she was struggling to keep in her lap. This also posed the concern of whether people with disabilities were getting the assistance they needed to accomplish daily tasks, such as grocery shopping.

ADA Advisory Council:

Karen Cushnyr, Chair, ADAAC
Terri O'Hare, Member, ADAAC

In May 2017, a joint interview was conducted of Ms. Karen Cushnyr, Chair, and Terri O'Hare, Member, ADAAC, COA, NM. Collectively, they provided the following information and information that is included in other sections of this report.

Approximately 18% of the adult population between the ages of 18 and 65 are disabled and about 8% of adolescents between the ages of 2 and 17 are disabled. Finally, about 14% of adults older than 65 years of age are disabled.

The Federal ADA Act has several sections, with Title II pertaining to public property and Title III pertaining to private property. Within the City, there are violations of the Act in both the public areas that the City is responsible for, such as City buildings, facilities and roads, and also in the private sector, such as hotels and restaurants, as well as other businesses.

Mr. Gabriel J. Campos is the Human Rights Officer for the City and is responsible for supporting the ADA Advisory Council and addressing ADA issues, such as violations of the ADA Act. They didn't believe it was his office that actually conducted ADA compliance inspections of businesses, and didn't know what City Department had that responsibility. They didn't believe that his office had any capability to inspect for violations.

They also addressed concerns with the Transit Department, which are more specifically addressed in the section on the Transit Department.

They believed the COA BioPark and Aviation Department were generally in compliance and was not aware of any specific issues. (Note: The interviews of other individuals revealed some concerns with the Sunport)

They expressed concern regarding the "depth of experience" at the Department of Municipal Development.

They provided the name of a website, "Access-Board.org" as a resource for ADA related information and said it was a "non-profit" organization. Note: There is another website with a similar name, www.access-board.gov which is an official website of the U.S. Access Board, an independent federal agency that promotes equality for people with disabilities, and focuses on accessible design for buildings, transportation, telecommunications, medical diagnostic equipment and information technology.

They emphasized the fact that since the ADA Act was passed 27 years ago for both public and private entities, the City was now "27 years out of compliance."

They addressed concerns regarding the non-compliance of information technology requirements, which is more specifically addressed in the section on the Department of Innovation and Technology.

They provided the following names of cities that represent good examples of ADA compliance: Berkley, CA, Houston, TX, Honolulu, HI, Minneapolis, MN, and Miami, FL. She said each of these cities would provide good examples of "best practices."

They believed the lack of City compliance with ADA Act requirements places the City at risk for potential law suits. They also expressed concern that the City appears to handle ADA Act compliance issues as “code violations” rather than as “Civil Rights violations.”

As an example of another City with a history of ADA Act compliance, they said that the City of Santa Fe, NM, used to be in violation of the ADA Act, but they have worked to become compliant. They said that the Department of Justice and the City of Santa Fe entered into a Settlement Agreement (Department of Justice Review Number 204-49-69).

Note: The Settlement Agreement focused on the City of Santa Fe’s violation of Title II of the ADA Act (28 C.F.R. Part 35).

They also expressed concern that the City’s lack of a current ADA Transition Plan, which was also not compliant. They said the Department of Municipal Development’s plan was not comprehensive.

Private Citizens with Disabilities:

Art Schreiber, Chairman NMCB
Curtis Chong, Manager of Assistive Technology

On September 4, 2017, a joint interview was conducted of Mr. Arthur Schreiber and Mr. Curtis Chong, in Albuquerque, NM. They provided information that is captured below and in other sections of this report.

Chong advised he is the Manager of Assistive Technology, NMCB. He provided information pertaining to compliance challenges at the Transit Department.

Schreiber said he is a veteran of World War Two and has been blind since 1982. He commented on Chong’s service within the Visually Impaired community and aid that Chong is recognized as the leading technology expert for the blind in the United States and serves with the National Federation of the Blind. He also led the Iowa Commission for the Blind and serves as Treasurer for the National Federation of the Blind for NM (NFBNM).

NMCB:

Greg Trapp, Executive Director, NMCB

In September 2017, an interview was conducted of Mr. Greg Trapp, JD, Executive Director, NMCB, Albuquerque, NM. He provided information that is captured both below and in more detail in the transit and technology sections of this report.

Trapp advised that he knew both Art Schreiber, Chairman of the NMCB, and Curtis Chong, Manager of Assistive Technology, NMCB.

He believes that COA Ordinances should address ADA compliance requirements for private property. Note: Private property is covered in Title III of the ADA.

He stated that while much focus is on the ADA, many of the accessibility requirements were established in the passage of Section 504, in the Rehabilitation Act of 1973, and Congress did appropriate funds with that law, so cities should have plans dating back to that section.

Trapp made a few other final comments regarding anecdotal concerns. He said the COA does not have sufficient signage for disabled persons, such as braille signs for the blind community. He said that many problems also impact “low vision” community members and also asserted that even sighted persons that require glasses can have serious difficulties.

NM Commission for the Deaf and Hard of Hearing:

In October 2017, a group interview was conducted of the following members of the NM Commission for the Deaf and Hard of Hearing (NMCDHH):

G. Nathan Gomme, Executive Director
Corina Gutiérrez, Director of Community Advocacy
Cheryl Padilla, Community Advocacy Specialist
Roger Robb, Training and Development
Richard Bailey, Service Coordinator

Additionally, Lisa Dignan, Director of Community Engagement, was present at the meeting providing American Sign Language (ASL) interpretation, with the assistance of Cameron Flores.

They provided information that is captured both below and in more detail in the police department, transit and technology sections of this report.

They advised that the list for improvement opportunities for the disabled community in Albuquerque is long, but that there were many positive things that the City was doing right.

They reinforced the positive by commenting on the technology the City has pertaining to the police department, which is specifically addressed in the section on the police department

They also commented that while it’s a “small issue,” City officials seem to have an “attitude” with the disabled community – he said that they get frustrated with community and do not know what to do.

They said there are no “standards” for training because the issues are so diverse and there is no “one size fits all.” They said their office is part of a national effort for a police training standard. One member said there are people who do not want the training. There are similar challenges for fire fighters protecting the community.

In spite of the challenges in Albuquerque, one member said that the COA and the City of Las Cruces are probably the two best cities in NM with regard to ADA compliance.

One member referred to a recent visit to Boston, which included a visit to the football stadium in Foxborough, MA, where the stadium used Assistant Listening Devices (ALD). He suggested the City use similar devices at the various venues and ensure the devices should comply with the ADA standards. He also said that if there are tour guides provided, then the City should also ensure there are ASL interpreters provided too. He emphasized that the devices allowed equal

access, which is an ADA requirement. He said that many City facilities, such as the Zoo and museums do not provide equal access.

One member said that NMCDHH has worked with the NM Secretary of State and the Bernalillo County Election Board on how to train Election Day volunteers in the election process. He said NMCDHH has also worked with deaf people on the how to vote, to include a video on the voting process that was deaf friendly. He said that in November 2016, after having gone through the efforts to improve the election processes, he had a terrible experience, but his voting experience in the most recent City election was good.

A member commented on the tourism in the City saying that he had tried to get a national conference held in Albuquerque, but the organization's site visits led them to conclude that there was inaccessibility for the disabled and the City was not "user friendly." He said people need to feel comfortable and know where to go—there was a lack of information and people didn't feel comfortable. Since the City receives federal funding, it should comply with ADA requirements. As an example of organizations not choosing Albuquerque, he said the National Association of Deaf preferred the City of Phoenix more than the COA for their conference—they even preferred Oklahoma City more than the COA because they considered it to be more accessible. He said that the City of Phoenix conducted training for people that included sensitivity and said the convention center benefited from that event—Phoenix is now preparing for another conference because they did so well in the last conference.

Loop NM Committee:

Stephen O. Frazier, Chair, Loop NM Committee
Mary Clark, President, Albuquerque Chapter, Hearing Loss Association of America

In October 2017, an interview was conducted of Stephen O. Frazier, Chair, Loop NM Committee and Mary Clark, Acting President, Albuquerque Chapter, Hearing Loss Association of America. Collectively, they provided information mainly pertaining to technology in various COA facilities and concerns regarding ART. Their specific information is incorporated in the Aviation and Transit sections of this report.

COA Departments:

The sections that follow pertain to compliance related topics for several of the COA departments.

Department of Municipal Development:

The Department of Municipal Development (DMD) is responsible for the City's infrastructure and most of its facilities. Therefore, this section includes topics regarding the draft updated Transition Plan (addresses much of the City infrastructure) and City facilities.

City Transition Plan History:

1996 Field Survey Report: COA contracted a field survey of the City to determine the City’s compliance with the ADA. The Survey Report indicated the ADA was passed in 1990 (Public Law 101-226) and required “public entities to make any necessary structural changes in facilities as soon as possible to meet the requirements of law, but in no event later than three years after the effective date of the regulation (i.e. no later than January 26, 1995).”⁶ This excerpt came from COA’s 1996 report that was conducted to ascertain the extent of compliance in the City and costs associated to bring the City into compliance. The survey was limited in scope, focusing mainly on arterial streets with secondary focus on collector streets. These limitations were due to “time constraints” and the “budget.”⁷ The report indicated there was an estimated 25,750 non-compliant instances along major streets.

2009 Field Survey Report: COA contracted to have a field survey of the City to determine compliance and progress since the 1995 field survey. The focus was on infrastructure, as in the 1995 survey, and included sidewalks, curb ramps and bus stops. The report acknowledged that the 1990 ADA required public entities to comply with Title II regulations and to make required structural changes to facilities as soon as possible, but not later than January 26, 1992 (this differs from the 1996 report’s statement that compliance was required by January 1995).⁸ The report reflected progress since the 1995 survey, but still estimated there were 202,700 deficiencies.

2017 City Draft Transition Plan Report:

DMD posted a draft update to the City’s Transition plan and a plan brochure in October 2017. The Report acknowledged that there was “limited funding to address all sidewalk and ramp needs at one time, so improvement strategies are required.”⁹ The 2017 assessment was done from a “desk top” in that, rather than a field survey, as in the two previous efforts, this was done using Global Positioning System (GPS) data and Geographic Information System (GIS) data, of which both were compiled into a database that was used to make the assessment of percentages of compliance for ramps and sidewalks, and for actual numbers of obstructions to curb ramps and sidewalks. The total number of sidewalk and ramp deficiencies was 79,719, but these numbers do not include slope related deficiencies that don’t show up on GIS data.

These deficiencies are depicted the tables beginning on the next page:

⁶ Americans with Disabilities Act Field Survey, City of Albuquerque Publics Works Department, page 1

⁷ Ibid

⁸ Americans with Disabilities Act Assessment Report, City of Albuquerque, page 1-1

⁹ Ibid, page 2

Table 3: Existing Curb Ramp Summary

Attribute/Characteristic Description	Slope Meets Current Standards *	Width Meets Current Standards	Truncated Domes Present	Potential ROW Needs	Missing Ramp	Pedestrian Push Button Relocation Required
Number of Attributes	4,929	28,681	5,907	13,745	5,422	1,053
Percent of Curb Ramps	12%	70%	15%	34%	13%	3%

*Slope is assumed to meet current ADA standards.

This is a copy of the “Existing Curb Ramp Summary” table from the 2017 report.¹⁰

Table 4: Summary of Curb Ramp Obstructions

Curb Ramp Obstruction Type	Utility Pole	Fire Hydrant	Pull Box	Water Meter or Water	Traffic Signal	Light Pole	Manhole Cover	Guy Wire	Pedestrian Pole	Other Obstruction
Total Number of Obstruction	2,985	1,540	1,058	795	605	577	301	128	120	4,216
Percent of Ramps With Obstructions	7%	4%	3%	2%	2%	2%	1%	1%	1%	10%

This is a copy of the “Summary of Curb Ramp Obstructions” table from the 2017 report.¹¹

Table 5: Existing Sidewalk Summary

Attribute/Characteristic Description	Sidewalks Less Than 4' Wide	Sidewalks 4' Wide or Greater	Potential ROW Needs	Passing Spaces Required
Number of Attributes	11,407	25,751	20,917	52,572
Percent of Sidewalks	31%	69%	56%	-
Miles of Impacted Sidewalk	1,003	2,123	2,064	2,344

This is a copy of the “Existing Sidewalk Summary” table from the 2017 report.¹²

¹⁰ Ibid, page 25

¹¹ Ibid, page 25

¹² Ibid, page 26

Table 6: Summary of Sidewalk Obstructions

Sidewalk Obstruction Type	Buckled Sidewalk	Severe Cracking	Pole Obstruction	Fire Hydrant	Guy Wire	Private Utility	Transit Facility/Bench	Other Obstruction
Number of Obstructions	2,726	2,193	1,978	1,390	339	230	106	6,718
Percent of Sidewalks With Obstructions	7%	6%	5%	4%	1%	1%	1%	18%

This is a copy of the “Summary of Sidewalk Obstructions” table from the 2017 report.¹³

The Transition Plan report also indicates improvement costs depicted in the following tables:¹⁴

Table 7: Curb Ramp Improvement Costs

Description	Total Amount
Curb Ramp Replacement Only	\$98,490,000
Obstruction Improvements Only	\$125,503,000
Total Curb Ramp Improvements	\$223,993,000

Note: Year 2017 unit prices provided.

Table 8: Sidewalk Improvement Costs

Description	Total Amount
Passing Spaces	\$29,025,555
Replace 100’ of Sidewalk Per Asset ID	\$131,469.50
Obstruction Improvements Only	\$39,022,000
Total Sidewalk Improvements	\$199,517,055

Note: Year 2017 unit prices provided.

¹³ Ibid, page 27

¹⁴ Ibid, pages 26-27

The purpose and goals of this plan appear to be similar to the previous field study reports referenced earlier in this report. Below are key excerpts from the brochure and the plan.

Brochure excerpts pertain to the purpose and goals:

Purpose of the Plan

The purpose of the ADA Transition Plan is to describe the curb ramp and sidewalk improvement needs within the public right of way throughout the COA, to outline the recommended procedures for implementation of the plan, to identify a process of implementation, and to provide costs associated with these improvements.

Goals of the Plan

The goal of this Plan is to:

- *Document the current ADA needs within the City's public right of way;*
- *Develop an effective capital improvement program;*
- *Optimize the pedestrian experience;*
- *Provide safe and usable pedestrian facilities; and*
- *Comply with all federal, state and local standards.*

The plan also stated the following regarding sidewalks:

The COA contains approximately 3,135 miles of sidewalks. A sidewalk refers to a paved path for pedestrians adjacent to the roadway, providing an accessible and safe route that people can use. ADA states that obstructions within a sidewalk require a 4-foot minimum clear width. Obstructions include poles, vegetation, cracking, fire hydrants, utility infrastructure, guy wire, buckled sidewalk, transit facility (shelter, trash can, bench), benches, and sidewalk termination. Furthermore, ADA requires where the clear width of the sidewalk is less than 5 feet, passing spaces shall be provided every 200 feet. The City is in the process of evaluating passing spaces to better understand this need.¹⁵

The following excerpt pertains to curb ramps:

A curb ramp, as defined by the ADA Tool Kit, is a short ramp cutting through a curb or built up to a curb, providing an accessible route that people with disabilities can use to safely transition without obstructions from a roadway to a curbed sidewalk and vice versa. Identifying all obstructions within the existing curb ramps was included in the evaluation. Obstructions include private utility infrastructure, fire hydrants, pull boxes, water meters, traffic signals, light poles, manhole covers, guy wires, pedestrian (sic) poles, and other obstructions. Other obstructions included private utility boxes/poles, gates, fences, walls, bollards, various signal equipment or damaged concrete.¹⁶

The City's transition plan only focused on existing curb ramps and sidewalk infrastructures, as noted in the excerpt from the draft updated COA Transition plan:

¹⁵ 2017 City of Albuquerque Draft Transition Plan Brochure, page 2

¹⁶ 2017 City of Albuquerque Draft Transition Plan Brochure, page 3

The COA has a variety of pedestrian facilities within 2,274 miles of public right of way. The City's public right of way is reserved for public travel and maintained by the COA. These pedestrian facilities include, but are not limited to: streets, roadways, curb ramps, sidewalks, bridges, traffic signal equipment, onstreet parking, alleys, medians, refuge islands, walkways, public buildings, and multi-use trails. However, existing curb ramp and sidewalk infrastructure within the public right of way was inventoried and evaluated for this assessment to quantify and understand the improvement needs to meet the standards of current ADA guidelines. The remaining COA pedestrian facilities, not included in this evaluation, will be scheduled at a later time either comprehensively, or on a project-by-project basis.

Since the assessment and plan did not incorporate other “COA pedestrian facilities,” then it is impossible to know how many additional ADA violations exist. This should be of great concern, as this means there are numerous pedestrian facilities that do not provide equal access to the disabled community in violation of their civil rights.

The next few pages contain images that depict example violations of the ADA as it pertains to pedestrian facilities, such as obstructions, buckled sidewalks and a lack of curb ramps. The purpose of these images is to give the reader an understanding of the issues. The actual number of problems depicted in these images number in the thousands and present a significant safety concern and civil rights violations for much of the disabled community. The images are loosely grouped together based on the type of problem, such as curb ramps at corners, obstructions and uneven surfaces.



This photo depicts a situation that has two blatant violations. The curb does not have an ADA ramp and the sidewalk is severely damaged. This situation is unsafe to both disabled and able bodied individuals, especially elderly citizens. Unfortunately, this photo doesn't sufficiently capture the steep angle of the sidewalk that adjoins the curb, which creates even further risks. (Address: 7500 block of Central Ave NE, ABQ)



The image depicts a residential intersection that does not have ramps. (Address: 8200 Block, Claremont Ave NE, COA)



This image depicts a corner in downtown where the tactile surface has been worn down and is in need of replacement.



The photograph on the left depicts a sidewalk with a light pole blocking the pathway – a wheelchair would not be able to pass through. (Address: 6900 block of La Lucena Ave NE, ABQ)



This image depicts a fire hydrant obstructing the sidewalk, which creates a hazard for people in wheelchairs or individuals with vision impairments. Note: This obstruction is near the utility pole depicted in the other image. (Address: 1700 block of 2nd Street SW, COA)



This image depicts a fire hydrant that blocks the path and thereby obstructing the way for a wheelchair bound person or a blind person to safely navigate. (Address: 100 block of Mesilla St NE, COA)



This image depicts a utility pole obstructing the sidewalk, which creates a hazard for people in wheel chairs or individuals with vision impairments. (Address: 1700 block of 2nd Street SW, COA)



This is an example of a potentially dangerous obstruction on the sidewalk on Tijeras Avenue NW, just south of the old County building, adjacent to the Civic Plaza. This obstruction poses a hazard to both sighted and non-sighted individuals.



This image depicts an obstruction at the corner of Pennsylvania Street and Rhode Island Street, COA.



This image depicts a sidewalk that is blocked by vegetation. (Address: 8200 block of Northridge Ave NE, COA)



This image depicts an example of a common problem with many sidewalks in the City. This buckled sidewalk is especially concerning, because the two segments do not evenly come together, but instead present a more difficult situation for a wheel chair bound person or a person with vision impairment. (Address: 900 block of Field St SW, COA)



This image depicts an uneven surface of a sidewalk that has been painted – this appears to be done in lieu of actually replacing this section of sidewalk, but it does not correct the violation and remains a hazard to a person in a wheel chair or without vision. (Address: 8500 block of Canyon Run Rd NE, COA)



This image depicts a metal plate laid over a drainage ditch, but causes an uneven surface for individuals with visual impairments and in wheel chairs. (Near the intersection of Broadway Ave NE and Kinley Ave NE, COA)

City Facilities:

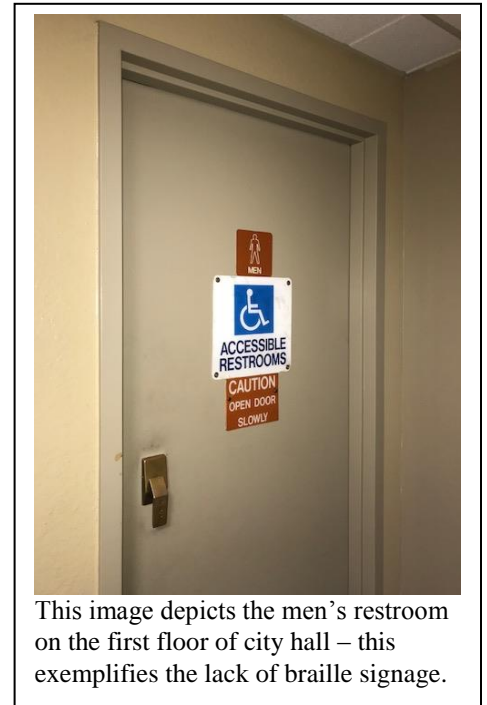
A common problem with City facilities is the lack of braille signs. Anecdotally, one citizen who has impaired vision described an embarrassing experience that he had in one of the City's buildings – he mistakenly entered the wrong restroom. As many of the City's buildings are older, this seems to be a common concern.

Another common violation are the non-compliant bathrooms.

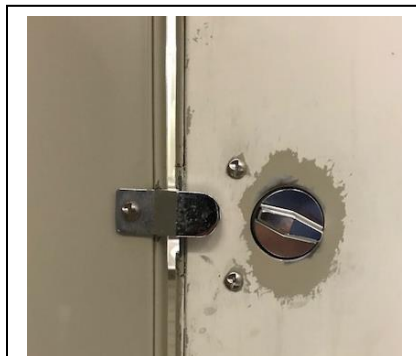
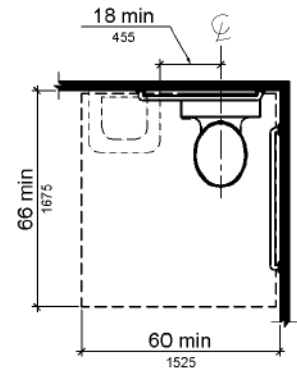
While many of the bathrooms have a sign on the door indicating they are "accessible," the bathroom fixtures do not always comply with ADA requirements in terms of proper height and clearances of counters and sinks, and the stalls are not large enough for a non-ambulatory person to transfer from a wheel chair to the toilet. This is the case with bathrooms in City Hall.

To be fully ADA compliant, bathroom stalls need to provide sufficient room for a non-ambulatory person to transfer from a wheel chair to a toilet. The image to the right depicts the required dimensions. The image in the lower right depicts an attempt to meet the requirements, but is not fully compliant and is not professional in appearance.

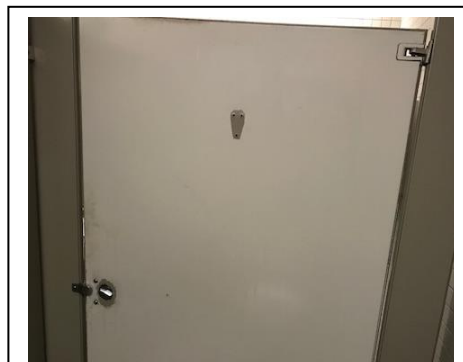
Additionally, the stall door hardware is not ADA compliant – the current "knobs" require twisting of the wrist – they should be levers. The hook on the inside of the stall doors is often missing and seldom placed at the required ADA height.



This image depicts the men's restroom on the first floor of city hall – this exemplifies the lack of braille signage.



This image depicts the incorrect door hardware for the "disabled" stall in the men's bathroom on the fifth floor of City Hall. The hardware should be a lever, which doesn't require a twisting or turning motion of the wrist, or pinching of fingers.



This image depicts the inside of a "disabled" bathroom stall in the men's room on the fifth floor of City Hall. The image shows the missing coat hook and the placement of where it was – too high.



This was an attempt to widen a non-compliant women's bathroom on the basement level of City Hall, but is still missing ADA required grab bars and is unprofessional in appearance.

Many of the problems are within facilities that fall within a specific City Department, such as Aviation or Transit, and are addressed in other sections of this report.

Civic Plaza: During the meeting with the ADAAC, a concern was expressed regarding the City Civic Center Plaza – the new project does not incorporate disability access. This image depicts the play area of the reconstructed plaza, looking north from the south side.

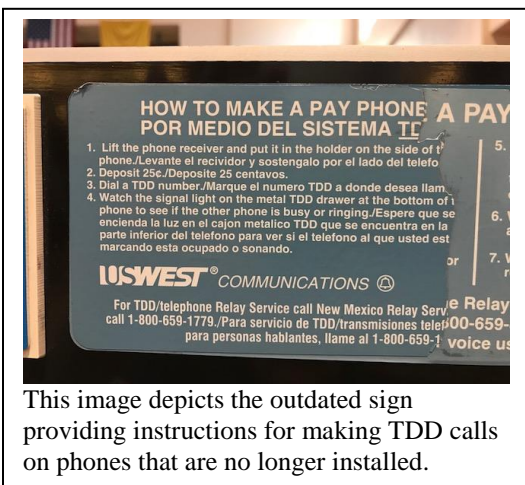
It is essential that the planning and design process for new projects in the City include participation and input from members of the disabled community to ensure all ADA related requirements are addressed.



Aviation Department:

In general, members of the ADAAC didn't have too many concerns regarding the City's Aviation Department and specifically the Sunport. However, a member of the Loop NM Committee shared concerns regarding Aviation Department leadership. Specifically, he said that the Director of Aviation has stopped communicating with both he and his colleague, the president of the HLAA on ADA related topics. In 2016, they discussed with the Director of Aviation, the possibility of installing loop technology at all terminal gates, so that persons who are hard of hearing could hear the public announcements regarding gate changes and flight information. He said that the Director had planned on installing a loop by the information desk, but that was not sufficient. He was not certain if the installation of loops would be the responsibility of the airlines or the City. In October 2017, OIG visited the Sunport and learned that Loop Technology had not been installed.

Note: Loop technology involves the use of a “wire” that is installed around a room or space and connected to a sound system, such as public announcement system, and then transmits an electromagnetic signal that is then picked up by the telecoil in a hearing aid or cochlear implant.¹⁷



This image depicts the outdated sign providing instructions for making TDD calls on phones that are no longer installed.

During the October visit to the Sunport, several images were taken of the facility that depict various ADA non-compliant concerns, to include a lack of braille signage. Additionally, members of the NMCDHH also recommended the Sunport install



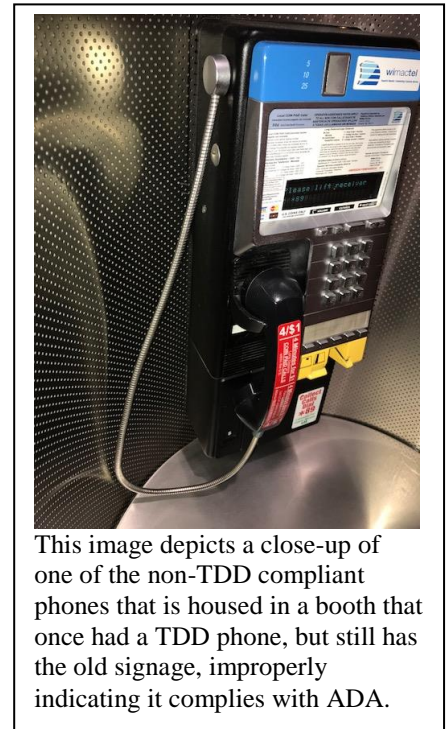
This image depicts non-TDD telephones mounted in an old housing that once had TDD phones.

¹⁷ <http://www.hearingloss.org/content/loop-technology> Accessed on October 30, 2017

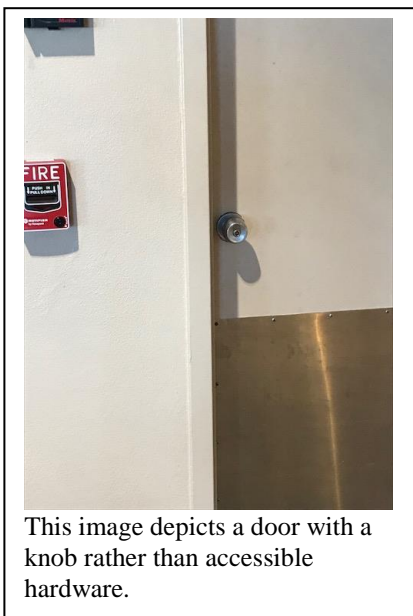
telecommunications equipment which included video as an alternative to teletype technology (TTY). There are telephones, but they do not appear to be TDD, though there is expired signage instructing the caller to “place the receiver on the side of the telephone” – it is apparent the sign refers to previous phone service from US West – US West has not existed since merging with Qwest in 2000. There are no receivers on the sides of these telephones.

In addition to the compliance problems with the public telephones at the Sunport, there are also compliance problems in other areas, to include the courtesy phones that don’t provide a method for members of the disable community to use them.

ADA Section 4.13.9 requires that accessible doors be equipped with hardware with handles that are easy to grasp with one hand and that does not require tight grasping, tight pinching, or twisting of the wrist to operation. There are some doors at the Sunport that fail to comply with this requirement.



This image depicts a close-up of one of the non-TDD compliant phones that is housed in a booth that once had a TDD phone, but still has the old signage, improperly indicating it complies with ADA.



This image depicts a door with a knob rather than accessible hardware.

The bathrooms do not have proper signage in braille for blind members of the community and directional signs to bathrooms don’t indicate if they are appropriate for disabled persons. The lack of braille signage seems to be one of the most pervasive violations throughout City facilities.



This image depicts an Automated External Defibrillator and Trauma Kit located the COA Sunport, but does not have braille signage.



This image depicts a fire extinguisher and courtesy phone located at the Sunport, but they do not have braille signage or the capability for the deaf to communicate on the phone.

Transit Department:

An ADAAC member addressed concerns with the Transit Department. She related that the Transit Department is not using the correct Federal ADA guidelines. She indicated that the Department of Justice guidelines should be used for ensuring compliance, but that the Transit

Department refers to the Federal Department of Transportation’s (DOT) Federal Transit Administration’s (FTA) guidelines, which are different. She said that the Director of the Transit Department uses “ten year old” guidelines. She referred to problems with allowing pets on board City buses. Specifically, if a pet rides on a bus, it can pose a threat to a Service Dog.

Note: The City Council changed City policy regarding allowing pets to ride on board City buses.

Another ADAAC member also expressed concerns regarding the Transit Department’s “ABQ Ride” program; she said that the “low vision” accessibility does not work and there hasn’t been any follow through on the problem. She also addressed a situation involving an ADA Advisory Council member who discussed the topic of “clipped corners” on transit ride cards. Specifically, “clipped corners” refers to clipping one corner of a ride card so that a visually impaired person can determine the top and front of the card. She said that the Transit Director said he would have a “bunch of the monthly cards hole punched,” which she said could damage the magnetic strip.

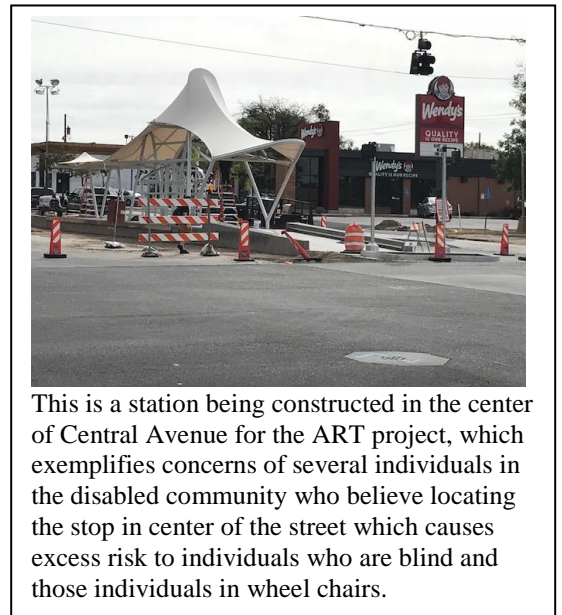
An ADAAC member said she encouraged the Transit Director to attend training on ADA requirements within the transit area.

The Manager of Assistive Technology, New Mexico Commission for the Blind, who spoke as a private citizen, advised that the Transit Department is where some of the “biggest” issues reside with regard to ADA compliance. He said that the Transit Department website is “okay,” but that he could not read updates to the Albuquerque Rapid Transit (ART) project. He said that DOJ contacted the City regarding non-compliance and that the City was at the “bottom of the list of historical compliance.”

He also advised the City’s ART project has many of the bus stop platforms installed in the middle of the road, instead of near the curb at the side of the road, making it difficult for disabled persons to the platforms. He said that Bruce Rizzieri, the Director of the Transit Department, said that accessible signals would be installed. He said he was concerned because the City did not consult with members of the blind community before moving forward on the ART project. He said while the City asserted they consulted with the NM Commission of the Blind (NMCB), he does not believe that was true.

He also stated the City developed a smart phone “app” titled “Where’s my Bus,” which allows users to locate COA buses. He said the app was not designed with the blind community in mind and the City did not consult with members of the blind community prior to developing and releasing the app. He understands that the Transit Department is currently working on making the app accessible to the disabled community.

Finally, he related that the Transit Department Director used the NMCB for meetings, but didn’t believe it was the best venue for logistical reasons. He thought meetings should be held at community centers or the City library, where evening meetings could be accommodated and were better for the blind community. He believed the Transit Department did not understand the differences between NMCB and NFBNM. The NMCB is more of an agency, and NFBNM advocates for the blind community—more like a “union.”



This is a station being constructed in the center of Central Avenue for the ART project, which exemplifies concerns of several individuals in the disabled community who believe locating the stop in center of the street which causes excess risk to individuals who are blind and those individuals in wheel chairs.

The NMCB Director addressed the ART project with regard to safety concerns for the disabled community. He said there have already been injuries to disabled persons around the construction sites due to the sites not being roped off. Prior to the initiation of the construction of the ART project, he was asked to endorse the project, which he did, but he characterized the project as a “bait and switch” in that the problems impacting the disabled community weren’t apparent in the description of the project.

He expressed concern that the ART system didn’t have a good feedback system, comparing it to the City of San Diego, which has devices that vibrate to signal the deaf citizen, and said Albuquerque needs these devices. He said this is especially needed with the ART system and that both the deaf and blind need these services.

He also commented on the Transit’s smart phone application for the bus system – he said that there was no accessible way for blind people to use the application. He said that the “paratransit” system was better than the “fixed route” system, which was not fully accessible.

The NMCDHH believed that the training being provided to police officers could be modified for bus operators. He said they are developing a placard to be used by bus operators that is similar to the one for police officers.

A member of NMCDHH advised that some cities have a flashing light to notify passengers waiting at train stations of arriving trains, which is helpful to deaf passengers who cannot hear the train arriving. This should be considered at the COA’s train station.

The President of Albuquerque Chapter of HLAA said that it was important that the ART project include visual signals and not just auditory signals – this is important for the deaf and hard of hearing community.

In October 2017, a visit was made to the City Transportation Center on 2nd Street, where it was observed that much of the platform adjacent to rail road tracks lacked detectable warning signs for individuals with vision impairment. Additionally, as expressed by a member of the deaf community, there were no visual signals to alert deaf individuals of the approach of a train.

Also, in October 2017, while traveling west on Central Avenue, a “Business Access” sign to alert drivers how to gain access to businesses in the construction area, were placed on sidewalks creating obstructions to pedestrian traffic. This is specifically a concern for pedestrians who are in wheel chairs or who have low vision.



This pedestrian area at the COA Transit Center does not have any detectable warning signs for blind individuals, to ensure they do not unknowingly walk over the tracks or off the platform edge.

Interview of Transit Department Director:

In October, 2017, an interview was conducted of Director Bruce Rizzieri, Transit Department, COA, NM, to address the concerns expressed by several individuals as captured in this report. Rizzieri responded to questions that were based on concerns expressed by members of the disabled community, to include members of the ADAAC for the COA, private citizens who have disabilities, and the Executive Director for the NMCB. He also provided information based upon the interpretations and terminology definitions used by the City Transit Department.

Rizzieri explained that a Transit Transition plan was created in 1995, but he could not provide a copy of it, as he was not aware of any existing copies. He also stated the 1995 plan is not relevant today. He said that unlike the Municipal Development Transition Plan that is periodically updated, the Transit Department does not provide updates, as the evolving process for Transit is based on a changing interpretation of the law and requirements, rather than the law changing.

As an example of how “interpretations” change, he said that paratransit complemented a fixed route, and originally required “curb to curb” service, but now requires “door to door” service. An exception to this requirement is when the service is for a residence in an apartment complex – the service is to the entrance of the complex. Today, the paratransit service is a separate service and the City has drivers that operate separate buses for those persons whose impairment makes it impossible to use the fixed route bus service.

He said that the Sun Van service employs a software program that riders can use to schedule pick-ups and drop-offs. Typically, the drop-off can’t be more than 30 minutes before a schedule appointment. The service has restricted uses and cannot be used for shopping and related trips, but rather for medical appointments.

He related that the paratransit plan was approved within five years and also said that there are no transit agencies in “full compliance.” He also said there are no fixed routes in the country that are “100% on time” in the country.

He stated that the FTA reviews “difficult areas” every two to three years. He explained that FTA hires outside consultants to accomplish this and that the goals are to assist agencies to comply with Federal requirements.

He related that the 2010 census reflected that the population in Albuquerque was over 500,000, so the FTA provides more scrutiny of the City’s Transit Department for this reason – it is based on population. He also said that the City does receive an annual review, which is normal. He said that the FTA has a National Transit Database where review results are kept.



Rizzieri said that within the compliance realm of FTA requirements, the term “violation” is not used, but instead, the term “deficiency” is used instead, as it more accurately portrays the purpose of the FTA’s reviews, which are to help cities correct deficiencies. He also said that in response to the FTA’s report, the Transit Department develops an “action plan” that is used to correct deficiencies. He said the Department must ensure a response is provided within 90 days – that is, a report that describes the corrective action plan. He clarified that the 90 day response requirement is for the plan and not the actual corrective actions. Corrections can vary in the length of time needed to accomplish ranging from a few weeks to even a year.

He described the FTA review schedule and process, stating that the FTA conducts a “triennial review” – the FTA conducted such a review three years ago and provided a 20 page pre-site visit list of questions prior to the visit. The Transit Department provided answers to FTA’s questions before their visit. The FTA was about a week long and their review included the maintenance facility and discussions with Transit personnel.

Rizzieri said that the ADA covers part of Section 504 of the Rehabilitation Act of 1973. He said the Department of Senior Affairs has responsibility for providing transportation to senior citizens (65+), which comes under Section 504.

He conveyed that there wasn’t a shortage on fixed route drivers or buses at the moment, but there were eight to ten vacancies that currently exist. He said the process for filling one position can take considerable time – eight weeks for the selection and hiring process and then two to three months for training once a new bus operator came on board. He said that the Sun Van turnover was not as bad as the motor coach operators.

He shared that there are differences in wages between bus drivers for the Transit Department and Department of Senior Affairs. He believed this was due to the different unions and their agreements with the City, and said Senior Affairs drivers probably receive more pay.

Rizzieri also addressed concerns regarding cut corners on bus cards. He said the Department has been cutting the lower right corner off of the fare cards since 2009. He said that during the summer of 2016, a member of the ADAAC brought up the issue of purchasing pre-cut cards instead of the City cutting the cards. He said that the City would consider purchasing pre-cut cards in the future, but their current inventory of cards is sufficient. He also said there are two types of bus passes – the rigid pass that has a magnetic strip, which has the clipped corner, and the monthly passes with photo identification which doesn’t require clipping.

Rizzieri also addressed the issue of service dogs and non-service animals aboard busses. He said that City Council passed a six-month pilot program that allowed cats and small dogs in cages to ride on busses. He said that the program also allowed large dogs what were on leashes and muzzled to ride on the busses. The program began in July 2016 and ended in December 2016 without becoming permanent. He said that executive communication will be going to City Council this week with the recommendation that the program should not be continued.

He said that the United States Department of Justice (DOJ) issues regulations for the ADA, but their regulations did not include bus transportation service. DOJ also defines a service animal to include both dogs and miniature ponies.

He explained that the FTA uses a broader definition of service animals, which includes most any animal, such as a monkey or a cat, as long as the animal performs a function for the person, such as detecting an epileptic seizure or a sugar low for a diabetic. He also advised that bus operators are restricted on what questions they can ask of the passenger – essentially they are permitted to ascertain if the animal is a service animal.

He disagreed with a complaint regarding how his Department treats the disabled community – while some members of the community expressed that employees have been disrespectful and have had an “attitude,” towards citizens, he asserted that this isn’t true generally speaking. He said that perhaps 5% of employees don’t do what they should do in serving the public.

He stated that all Department employees receive initial training and then are required to attend annual training which last four hours. The training includes ADA requirements. He said it takes approximately six weeks each year to cycle all Department employees through the refresher training. He said the Department used to give “sensitivity” training, such as having employees where blindfolds to experience the difficulties of blindness, but the training is no longer offered or required.

Rizzieri asserted that there weren’t any accessibility technology standards for “smart phones.” He referenced a question from the ADAAC indicating that the Transit Department’s “app” didn’t work. He asked why the app didn’t work and he said they advised the app didn’t meet Section 508 standards. He said that Section 508 only applies to federal agencies.

(Note: This is an accurate assertion based on a review of Section 508; however, as a “best practice,” there is nothing to prevent the City from incorporating Section 508 standards. The DOJ has resources available to assist local governments to ensure compliance with Section 508 standards.)

Rizzieri addressed a concern expressed by ADAAC members regarding the “rumble strips” that are being installed along the ART route. Specifically, the ADAAC expressed concern that the rumble strips might be in crosswalks and therefore present a risk to blind or low vision citizens or citizens in wheelchairs. He affirmed that the rumble strips would not go through sidewalks.

He also said that while there have been past incidents where disabled citizens have had mishaps in ART construction areas that were not properly “roped off,” the ART contractor has corrected those locations.

He also addressed concerns regarding the ART platforms that are being built in the middle of Central Avenue, which can pose an increased risk to citizens in wheelchairs and those with blindness and impaired vision. He said that there are “tradeoffs,” meaning that “just because the disabled person doesn’t want to have to cross the street to get to the platform, shouldn’t mean the platform must not be built in the middle of the street. He believed the signals that would be installed at the crossings would minimize the risk and went on to say that there will always be a risk when crossing a street.



This image depicts another perspective of a bus station located in the center of the street.

Rizzieri advised that he was satisfied with the platform “standards.” He said that the FTA has “light rail” standards. He further expressed that the City applies standards from the United States Access Board (www.access-board.gov), which is a Federal Agency that provides guidelines and standards for various environments, including the transportation environment.

He said his Department meets with the FTA on a quarterly basis – they meet with a project manager who has oversight of transit programs. The FTA manager reviews drawings, dimensions of statute requirements to ensure compliance.

He said that there are more than 2,300 bus stops in the City, and that every bus stop has a sign with a square pole, rather than a round pole, which conveys to a blind person that it is bus stop sign. He said that there is also a “puck” on the sign with the stop number. He said that a passenger can “text” the number on the puck to learn more information about the bus schedule. He also added that the ART system will have braille signs available.

Department of Cultural Affairs:

The Department of Cultural Affairs encompasses several facilities and the BioPark, which includes the zoo, botanical gardens and aquarium.

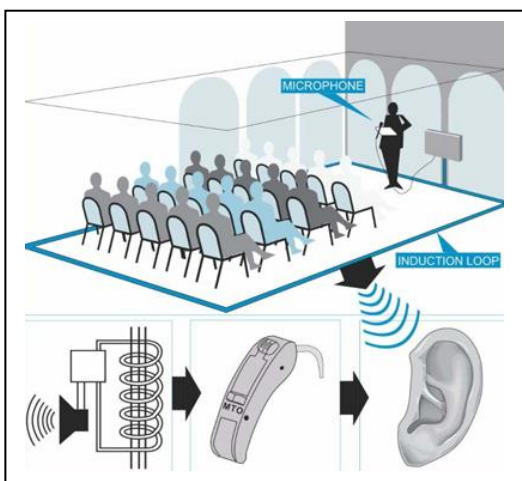
A visit to the zoo revealed that bathrooms there are not in full compliance with the ADA as it relates to the height and clearances of the counters and sinks.

The bathrooms in the public areas did not have braille signage and the bathroom in the area just outside the entrance was not an accessible bathroom. Equal access to the disabled community is important in all areas of the zoo.

One of the Cultural Affairs facilities is the City owned historical Kimo Theater. A member of the Loop NM Committee advised that the COA installed a new sound system in the theater in 2010, which at the time was in compliance with the ADA, but the ADA was revised and the theater is no longer in compliance. He said that the theater may not be “grandfathered” either.



This is an example of a non-compliant bathroom at the COA BioPark Zoo. Sinks for disabled persons in wheel chairs should not be mounted higher than 34 inches from the floor, and allow a 29 inch clearance.



Department of Parks and Recreation:

The Department of Parks and Recreation has responsibility for the City's golf courses, parks, gun range and open space areas, to include the "Bosque" area along the Rio Grande River.

Several visits to some of the golf course facilities revealed the need for braille signage and updating of bathrooms, which were not fully compliant with the ADA.



This is another example of a trail at the Bosque Open Space area that is both too soft and too narrow.

Members of the ADAAC expressed concern that the Bosque Open Space area within the City did not have ADA compliant trails, which should be fully accessible to the disabled community. The ADA requires equal access, which in the case of the Bosque trails means that people who are in wheel chairs, blind or have other impairments must have as much access as those individuals who do not have any disabling

impairment. An inspection of the City owned open space in portions of the Bosque revealed trails that were not accessible due to soft sand, narrow passages and obstructions.



This is an example of an inaccessible trail at the Bosque Open Space area. There are several such examples included, as this is a frequent non-compliance issue. The problems are several, to include soft soil and narrow paths.



A common problem at the Bosque Open Space are trails that have obstructions, such as these branches and tree limbs. There are areas too where low hanging branches are a hazard to individuals who are blind.

Department of Innovation and Technology:

Department of Technology and Innovation (DTI) Director Peter Ambs advised that the City used "NEOGOV" for all Human Resources (HR) job applications (www.neogov.com). He said that NEOGOV is used by over 1,500 government entities, to include HR departments for recruitment purposes.

He related that DTI and the City strive to achieve and maintain accessibility across digital engagement platforms. He said he doesn't have a record of specific accessibility issues with the City's use of the NEOGOV product. He said that his office would like to be apprised when there are specific accessibility issues with the product, so they can properly investigate and address those issues.

Ambs also conveyed that the City requested "GovernmentJobs.com" provide documentation of Section 508 (of the Rehabilitation Act of 1973) compliance for the NEOGOV product (Note:

GovernmentJobs.com does business as NEOGOV.¹⁸). In response, GovernmentJobs.com provided documentation, dated April 2017, and was comprised of a “CERTIFICATE OF SECTION 508 & WCAG 2.0 A & AA COMPLIANCE” and a Voluntary Product Accessibility Template (VPAT). Both documents were completed by Criterion 508 Solutions, Inc. (Note: Criterion 508 Solutions, Inc., is a business consulting company.¹⁹) He said that the compliance certificate provided was based on Criterion 508 Solutions’ interpretation of Section 508 as there currently is no governmental certification for Section 508 compliance. He also indicated the VPAT utilized appears to follow W3C WCAG 2.0 AA criteria. He said these criteria were adopted – under a final rule published January 18, 2017 – as the minimum standard for Section 508 compliance as of January 18, 2018, for federal and federally-funded websites.

The NMCB Director expressed concern on the problems with the “NEOGO” system that the City uses for job applications. He said that the system was not “very accessible” for blind individuals, emphasizing that parts of the system don’t work well for the blind community. He said the State of NM also uses the system and has created some “work arounds” to enable blind citizens to use the system.

An ADAAC member asserted that the City doesn’t comply with information technology requirements. For instance, she said the City doesn’t comply with Section 508 of the Act, which pertains to electronics, such as screen readers for visually impaired persons. She said the screen readers should interface with “Dragon” software which is a speech recognition program.

The NMCDHH Director expressed that the deaf community is a “forgotten population,” in that there are opportunities to improve the City’s commitment to the deaf community. He said the City doesn’t include sufficient captioning in locations that have video displays. He compared Albuquerque to the New England area they were much better in the use of captioning.

He also addressed the National Emergency Number Association (NENA) and the “911 text” capability for people to text to a public-safety answering point (PSAP), when there is an emergency and either the sender of the text is deaf, hard of hearing, or is in a situation where it would endanger the person sending the text, such as if an intruder was in someone’s home or there is a threat of domestic violence. He said that the system is not working in the COA. He also said there is a new technology that allows “real time” text to be exchanged back and forth between the sender and the PSAP operator. NENA is continuing to develop a standard for the “Next Generation 9-1-1” (NG9-1-1) system which will also allow images to be sent to the PSAP.

He also addressed the need for video phones – he said that other cities have these phones in city facilities. He said the COA fault due to availability, but that he was working with the Utilities to get the phones.

Another NMCDHH member said that senior citizens attending conferences and seminars in the COA may not have “smart phones,” so it is imperative that there are video phones available for them. He said this is important if they need to call a cab for a ride. He also said that video phones provide a back up to other deaf individuals who find their smart phones run out of power. He also said that there should be more access to the internet by the COA

¹⁸ <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=44734653>, accessed October 31, 2017

¹⁹ <https://www.bloomberg.com/profiles/companies/0010967D:US-criterion-508-solutions-inc>, accessed October 31, 2017

The NMCDHH Director also shared the need for more use of “loop technology” which supports that hard of hearing community. He said it is used at some of the facilities owned by the City.

A member of the Loop Committee stated that the State of Minnesota passed legislation that all new facilities built must have new loop technology installed. He said that the State of New York requires “neck loops” if an inductive loop is not installed in the room or venue. He said that installing assistive technology is important to the “spirit” of the law and is the “right thing to do.”

Office of the City Clerk:

Members of the ADACC and citizens attending one ADAAC meeting in October expressed concerns regarding difficulties with some of the voting locations during the October 2017 election. Specifically, they shared that the City did not provide adequate accessibility accommodations, such as ADA compliant voting booths that were accessible to individuals in wheel chairs. One individual in a wheel chair was provided a place to sit at a table to vote with no privacy screens.

The ADA requires that there should be at least one accessible voting station at polling places and provides an “ADA Checklist for Polling Places,” which is available for download as a PDF document at: <https://www.ada.gov/votingck.htm> The document not only addresses accessibility needs of voters in wheel chairs, but also for voters who are blind or have low vision and for those individuals who are deaf or are hard of hearing.

Albuquerque Police Department:

A member of the ADAAC expressed concern that the APD headquarters facility does not have an ADA compliant accessible parking and a compliant ramp.

A NMCDHH member complimented the APD “smartphone” application that is accessible for those citizens with a hearing loss. He said that mobile applications make it easier for members of the deaf and blind community. However, he did say that the application does have opportunities for improvement. Notably, for the blind, the reader application reads the screen and can miss a spot if the screen goes dark. He believed this was an important opportunity for improvement. He expressed that he was hopeful because the City generally provides interpreters at City events and cooperates with the deaf and hard of hearing community.

He commented that he has worked closely with APD to ensure they understand the issues and circumstances of the deaf, hard of hearing and blind community. He said that he appreciated that APD Chief Gordon Eden was present at a golf event to show his support. He also said that the NMCDHH is working with the APD and law enforcement in NM to develop placards with information that can be used between a police officer and a citizen who is deaf or hard of hearing, to communicate.

The NMCDHH Director said that the APD still needs to improve in how they interact with individuals that have medical and mental health conditions. He described the efforts as being inadequate and also stated screens that the City uses for informing the public of situations on the highway are not helpful to blind citizens.

Another NMCDHH member provided a positive perspective on the working relationship between NMCDHH and the APD; he said the APD has been working with NMCDHH for about two to three years. The APD has provided him with the opportunity to speak to APD cadets. He also addressed a statewide initiative to develop placards that people that are deaf can use to communicate essential information to police officers in certain situations. He said his office worked with APD to develop a letter of understanding to get the placards completed and has expanded the program statewide.



This is the front side of three placards developed for use by the APD to assist communication between police officers and deaf and hard of hearing citizens.



This is the reverse side of the placards.

City Council:

An ADAAC member expressed concerns regarding ADA compliance in the Vincent E. Griego Council Chambers. Specifically, the existing ramp is too steep. There isn't any captioning for City Council meetings available through Government Channel 16 and Council meetings do not have an American Sign Language interpreter present at City Council meetings.

Comments:

This inspection process and informal conversations with City officials raised several concerns regarding the current state of the City's compliance with the ADA and other federal statutes and regulations intended to protect the civil rights of disabled persons. Additionally, there appeared to be a general laissez-faire attitude in some of the interactions. It seems many people believe

compliance with the ADA is akin to “code enforcement” rather than it being compliance with a civil right.

While it is only an impression, it appears too that there is a degree of environmental injustice within the City, as it pertains to ADA compliance. That is, during the random inspection process, it seems certain neighborhoods have higher degrees of non-compliance with regard to curb ramps and public access ways – such as severely buckled sidewalks.

One City official commented that the ADA was an “unfunded mandate” by Congress. This is simply not true. There are Cities that have made compliance with the ADA and other federal statutes and regulations to protect the disabled community, a top priority in funding, such as Honolulu. There are current capital improvement projects in the City that cost millions of dollars – money that could have been diverted to ADA compliance projects.

This inspection focused on ADA Title II, however, Title III pertains to the protection of discrimination on the basis of disability in the area of public accommodations, such as restaurants, theaters, schools and recreation facilities. While Title III doesn’t apply to the City, this could be an opportunity for the City to establish an ordinance that mirrors Title III, enabling the City to ensure the disabled community is protected from discrimination at commercial facilities.

The City leadership – those who have been elected by the community and their appointees should make ADA the top priority and be the first in line to receive funding before any other capital project gets funded. This is a civil right. Other cities in New Mexico, to include Santa Fe, Gallup and Taos have been the subject of a DOJ investigation and settlement. If the fact that this is a civil right isn’t enough to make ADA compliance a top priority, then this fact should be enough when weighing the costs and benefits. Add to this, the exposure to law suits against the City – is this being good stewards of the taxpayer’s hard earned dollars and protecting the public trust?

Conclusions:

While the City recently released a draft update to the transition plan, there is ample opportunity to address the systemic failure of the City to comply with one of the most important areas of law – civil rights. It would seem in this time and era that the protection of civil rights would be paramount in priority.

Additionally, the City’s transition plan is narrow in scope – it only addresses curbs and public right of way sidewalks. The transition plan does not address City facilities, technology, transit and open spaces.

While progress has been made in compliance with the ADA, it is insufficient – the City has had over a quarter of a century to comply with the law and there are still thousands of violations. Funding should never have been the main factor – ADA compliance should have been the paramount factor in capital improvement decisions.