

ADA Facilities Survey – Summary Report

City of Seattle

Prepared by Meeting the Challenge, Inc.

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This Report is available in alternative formats by request

1.0 Introduction

The City of Seattle contracted Meeting the Challenge Inc. (MTC) to conduct an on-site review of compliance with the Americans with Disabilities Act (ADA) in City facilities. This report includes an analysis of the data collected from 108 City-owned facilities identifying and describing barriers, applicable sections of the 2010 Standards, and priorities for barrier removal as recommended by the Department of Justice (DOJ). The City plans to incorporate the subsequent data collection of findings for elements which were not compliant with the scoping and technical provisions of the 2010 ADA Standards for Accessible Design (2010 Standards) into its Citywide Transition Plan.

1.1 Transition Plan Requirements

Regulations require a transition plan when physical changes to facilities are necessary to achieve program accessibility. The purpose of Title II of the ADA is not to drive an urban renewal plan for the City's infrastructure and buildings. Rather, the ADA is a civil rights law intended to include people with disabilities in the day-to-day life of American communities. To envision the ADA as an architectural code would be short-sighted. It is more than a list of findings to be fixed.

A transition plan must provide a path to a future that is accessible and inclusive for everyone. Like any plan, it should set objectives based on priorities that create realistic time-sensitive goals. The document should set "forth the steps necessary to complete such changes" ([28 CFR Part¹] §35.150(d)(1)). Regulations originally required public entities with 50 or more employees to develop a transition plan "within six months of January 26, 1992". Structural changes were expected to "be made within three years of January 26, 1992, but in any event as expeditiously as possible" (§35.150)(c).

The transparency of the transition plan process is essential to giving ownership of the plan to all stakeholders. Inherent to the motto of many in the disability community, "nothing about us,

¹ All citations in this report are for 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services: [28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services](https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm): https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm

without us,” is the understanding that members of society (other than people with disabilities), are not better informed or situated, than people with disabilities, themselves to make decisions about or for people with disabilities. The participation by people with disabilities or organizations representing them in the formal adoption of a transition plan is essential.

The regulation clearly states: A public entity 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. A copy of the transition plan shall be made available for public inspection (§35.150(d)(1)).

A transition plan, per Title II regulation (§35.150(d)(3)) must at minimum:

- Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- Describe in detail the methods that will be used to make the facilities accessible;
- Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
- Indicate the official responsible for implementation of the plan.

1.2 Report

The collection of data and the subsequent findings from the 108 facilities surveyed by MTC have been listed in a transition plan data table (TPD). The TPD was produced by MTC to identify structural conditions in the City’s facilities that present or might present barriers preventing or limiting the opportunity of people with disabilities to access the City’s services, programs, and activities.

This report summarizes the process by which the underlying data table was developed. It describes how the data was gathered and analyzed and recommends how the findings should be used. The TPD also includes recommendations for structural mitigation of each finding.

The TPD includes the preliminary information necessary to the development of a transition plan. Neither the TPD nor this summary or the combination of the two constitutes a transition plan. The intention is to provide an overview of the data and findings in the TPD. It is not intended as narrative list of those findings.

The City must align any decisions about which of these findings should be mitigated, how they should be mitigated, and when they should be mitigated. This should be done in conjunction with its self-evaluation of programs, policies, and practices.

The final section of this report will discuss the next steps necessary to create a transition plan based on the TPD.

1.3 Overview of the Facilities Survey

There are four essential components required in a transition plan: a barrier list, a mitigation plan, a barrier removal schedule and an official responsible for oversight. As mentioned above, a list of findings and recommendations for mitigation is listed in the TPD. The City will provide the remaining two components: a schedule of completion dates for barrier removal and naming the person or persons responsible for implementation.

The findings are comprised of existing conditions (*as-is* measurements or observations) that are not consistent with the requirements (scoping or technical provisions) or best practices (advisory comments) stated in the 2010 ADA Standards for Accessible Design.

Analysis of the collected data identified 7,151 findings (7,115 do not adhere to ADA Standards and 36 are not best practice).

Some findings may not be barriers to program access.

An analysis of the services, programs, and activities associated with each facility (outside the scope of this project) will be necessary to identify those barriers that can be surmounted programmatically.

Table 1 summarizes the findings based on their intrinsic level of priority (1 – Entry, 2 – Service, 3 – Restroom, and 4 – Other) and rough order of magnitude (ROM) degree of difficulty for mitigation (1 – High, 2 – Moderate, and 3 – Low). Findings in the cells shaded orange (the *orange zone* [*low and moderate mitigation Entry and Services, low mitigation Restrooms*²]), to the upper left, are those that can be addressed first. Many of the findings in the orange zone can be described, metaphorically, as the “low hanging fruit.” Findings in the cells shaded green are secondary. [*Green: moderate mitigation Restrooms, low mitigation Other.*] Findings in the cells shaded yellow are expected to be long-term projects as they will typically be very costly and need long lead times for planning and budgeting. [*Yellow: high mitigation Entry, Services and Restrooms.*] Findings in the cells shaded light blue (the *blue zone* [*moderate and high mitigation Other*]), to the lower right, are those in the lowest priority category.

² Text descriptions of color zones, in square brackets, added to original MTC text.

Intrinsic Priority	Mitigation Difficulty 3-Low	Mitigation Difficulty 2-Moderate	Mitigation Difficulty 1-High	Total	Percentage at each priority level
1-Entry	477	128	456	1,061	15%
2-Services	1,362	293	135	1,790	25%
3-Restrooms	2,877	513	425	3,815	53%
4-Other	220	255	10	485	7%
Total	4,936	1,189	1,026	7,151	100%
Percentage at each difficulty level	69%	17%	14%	100%	

Color	Orange	Green	Yellow	Blue	Totals
Number	5137	733	1016	265	7,151
Percentage	72%	10%	14%	4%	100%

1.4 All Findings Do Not Need to Be Mitigated

All barriers are not created equal. As noted, the ADA’s Title II regulations do not necessarily “require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities” ([§35.150\(a\)\(1\)](#)). A public entity must operate its services, programs, or activities so that its services, programs, or activities, when *viewed in their entirety*, are readily accessible to and usable by individuals with disabilities. When a public entity can establish that a program viewed in its entirety is accessible, without removing barriers from a given facility (where that program is offered), the priority for mitigating findings in that facility is the lowest.

The regulations do not require a public entity to remove a barrier, where removal of a barrier would result in a fundamental alteration to the nature of a program. The regulations would not require, for example, paving over the grass on a baseball field (as that would cause a fundamental alteration).

In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity. ([§35.150\(a\)\(3\)](#)).

The regulations do not require a local government to remove architectural barriers, when doing so “would threaten or destroy the historic significance of an historic property.”

(§35.150(a)(2)) Trials in a public court, for example, must be accessible to the public, as well as participants in the trial. If alterations necessary to provide that access to an historical courthouse would *threaten or destroy the historical significance*, then the program must be relocated.

The above exceptions do not apply to new construction and alterations undertaken and completed since January 26, 1992.

2.0 Project Approach and Data Collection

MTC approaches the development of a transition plan data table in three general steps. The first is described as data collection. The next is an objective analysis of that data per architectural design standards and other criteria to identify scoping and technical inconsistencies. Finally, a deliverable is produced in the form of a transition plan data table. This deliverable is typically meant to include the required elements of a transition plan.

MTC uses tablet-based, proprietary software developed in the MS Access database application to collect location information and the observable or measurable attributes of elements that have accessibility requirements. MTC’s software acts as an electronic checklist that ensures thorough documentation of on-site conditions and compiles that information directly to a database. Significantly, this process eliminates an intermediate step of transferring handwritten information from paper checklists into an electronic format.

2.1 Analysis

MTC analyzed the collected data in several layers. Initially, MTC’s Access-based software identified approximately half of the conditions that did not adhere to the ADA Standards. MTC’s senior project consultants analyzed the remaining data to identify findings that were based on multiple/complex attribute values. This was a labor-intensive process completed by MTC staff with comprehensive knowledge of the ADA Standards and regulatory requirements of Title II. MTC’s analysis was limited because of the lack of information regarding dates of construction and alterations. The facilities were analyzed as though they were constructed or altered since March 15, 2012. New construction and alterations to existing facilities, initiated by the City since January 26, 1992, regardless of program access evaluation, must adhere to the accessible design standards in effect at the time of construction.

2.1.1 Safe Harbor, New Construction, and Alterations

Identification of elements having safe harbor requires specific, detailed information as to the dates and locations of construction and alterations to facilities.

Generically, there are a limited number of elements having *as-is* conditions that adhere to previous standards that would not also adhere to the 2010 ADA Standards. Most of the elements, for which safe harbor may be applied, have relatively low mitigation difficulty. Among the features that may qualify for safe harbor are the following:

- Push-side surfaces of doors up to ten inches that are not smooth
- Water closet centerlines between 18 and 18.5 inches from the near wall
- Single wheelchair accessible (i.e., low) drinking fountains
- Operable parts between 48 and 54 inches or between 9 and 15 inches The City will determine, independent of MTC, when safe harbor applies.

2.1.2 Barriers Not Necessarily Required to Be Removed

It is not necessary to schedule structural barrier removal, where program access, *viewed in its entirety*, is provided in the most integrated setting appropriate to the needs of individuals with disabilities. MTC recommends deferring mitigation of barriers where findings do not affect access to services, programs, or activities.

A transition plan should include findings even when those findings do not affect program access. However, mitigation of such findings is not necessarily required until certain events trigger structural barrier removal. Events that might trigger structural barrier removal include, but are not limited to the following:

- Request for a reasonable accommodation under Title I of the ADA
- Alterations to these built elements
- Relocation of a program or repurposing of the space
- General renovation of a facility
- A determination that a barrier was created by new construction or alteration after January 26, 1992, not covered by safe harbor
- A specific complaint from the public

Any structural barrier that is the subject of a public complaint, unless it can be circumvented through alternative methods or means, should be removed. Structural alterations to findings is not required when they would cause a fundamental alteration to the nature of a program.

It is important to consider a review of any construction in City facilities since January 26, 1992. Findings, whether or not barriers to program access, built since that date, should be removed.

2.1.3 Factors in Setting Priorities (Timeframes for Mitigation)

As stated previously, MTC uses DOJ terms to rate the intrinsic priority of removing structural barriers. These levels of priority can be viewed as a set of concentric circles. The outermost circle comprises the arrival at and access to entrances of a facility. This includes paths of travel from public walkways, transit stops, and accessible parking. MTC labels these as priority 1 – Entry.

The next level is access to services, upon entering a facility. This includes but is not limited to spaces and elements such as, reception counters in lobbies, the stacks in libraries, swimming pools in recreation centers, and picnic tables in parks. MTC labels these as priority 2 – Service. The third level is restrooms. Restrooms (except those at highway rest areas) are not considered to contain a “primary function” of a facility or to provide a service. For this reason, restrooms are a lower priority than services. MTC labels these as priority 3 – Restroom.

The lowest level of priority is anything that does not fit in one of the above categories. Drinking fountains, breakrooms, and appliances (refrigerators and microwave ovens in breakrooms, for example) fall into this category. MTC labels these 4 – Other.

From a practical perspective, MTC contends that the difficulty of mitigating a finding is a very reasonable and pragmatic consideration, for deciding the relative order in which mitigation of findings should be completed. Mitigation of high priority and low difficulty findings at the earliest opportunity is sensible and cost effective. Examples of this category of finding include, but are not limited to, re-striping parking spaces, raising parking signs to a minimum of 60 inches, adjusting door pressures and closing speeds, and installing tactile designation signage. This “low hanging fruit” can often be mitigated with maintenance forces and will seldom cost much or take long to complete.

At the other end of the priority spectrum, the high mitigation difficulty findings (by definition) will require, expensive, long-term projects. Certainly, MTC recommends mitigating the highest priority/high difficulty findings before those that are lower priority. For example, providing accessible parking spaces by regrading a site, might cost as much as a major renovation to provide accessible restrooms, but in understanding DOJ sense of priority, the parking is more important than the restrooms.

MTC labels findings as high mitigation difficulty when our analysis presumes that the mitigation will ordinarily take significant quantities of time and funding. Major projects will require design budgets and time. Major projects will require time to mobilize and complete construction. Major projects will almost always require the issue of an RFP and the ensuing decision and negotiation process to hire a contractor. A public entity must consider all these factors in projecting a (long-term) schedule for mitigating these findings.

3.0 Transition Plan Development

MTC's scope of work was limited to a survey of identified City facilities. *As-is* conditions in those facilities that did not adhere to the scoping and technical provisions of the 2010 ADA Standards for Accessible Design were identified.

MTC's TPD is merely the beginning of the process by which a transition plan is developed, adopted, and implemented by a public entity. MTC recommends that the City carefully consider if it needs to mitigate each finding, in light of discoveries made in its self-evaluation.

MTC recommends the City apply knowledge gained from its self-evaluation to determine whether it would be better – more cost-effective – to resolve some of the structural findings in MTC's TPD through methods and means other than architectural barrier removal.

3.1 Final Remarks and Conclusions

MTC recommends the City, use the content of the TPD and the overview provided in this report to move forward in the development of a robust transition plan. A prioritization scheme for barrier removal schedule should be developed.

The City, with participation of people with disabilities or organizations representing them, must flesh-out the scheme for completing mitigation of findings and assigning the responsibility for implementing the plan. Mitigation of findings in facilities alone, outside of the context of the accessibility of the City's programs, policies, and practices, cannot ensure the absence of prohibited discrimination based on disability. Discoveries made through its self-evaluation should be included.

In addition to the data that MTC has collected and analyzed on behalf of the City, in the form of a searchable, sortable, and filterable data table, MTC is also providing access to MS Power BI an on-line tool that can provide many vectors of access to that data. It is recommended that the City use facility data available through the TPD and Power BI in conjunction with the results of its separately conducted Self-evaluation. MTC will continue to be available to the City to provide further consultation on development of the City's transition plan.

END of MTC Report