City of Killeen, Texas – ADA Self-Evaluation Report

EVALUATION OF CITY SERVICES, POLICIES, AND PRACTICES FOR ADA COMPLIANCE

PREPARED BY MEETING THE CHALLENGE, INC. – A CP&Y COMPANY

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Executive Summary

The City of Killeen (the City), Texas, to complete an evaluation of its continuous efforts to comply with title II of the Americans with Disabilities Act (ADA) and develop its Transition Plan, contracted the services of Meeting the Challenge, Inc., A CP&Y Company (MTC), in May 2022. This report will describe actions taken by the City and MTC to identify any barriers to City programs which were caused, or might have been caused, by policies, practices, procedures, or barriers in facilities. Significantly, while MTC has assisted the City in this limited project, the process of evaluating the City's policies, practices, and facilities for compliance with the ADA is an ongoing program to ensure that people of all abilities will be integrated into the same public opportunities as others.

Programs

The title II regulations require state and local governments to ensure that each of their programs, when viewed in their entirety, are accessible to and usable by qualified individuals with disabilities. To evaluate the accessibility of the City's programs, MTC conducted an inventory and review of the City's policies, interviewed a comprehensive cross-section of the City's management team, and conducted an ADA knowledge survey of the City's employees. MTC also conducted user testing on the City's website.

Facilities

This evaluation has included many actions and processes to identify physical barriers in the City's buildings and parks. MTC conducted data collection in all City facilities to identify conditions which affect or might affect access to City services, programs, or activities. The evaluation of compliance with the ADA's physical accessibility requirements was based on the 2010 ADA Standards for Accessible Design (ADA Standards) and the Texas Accessibility Standards (TAS). Though the Access Board's ABAAS/ODA federal standards, though not yet adopted by the Department of Justice (DOJ) as ADA Standards, they may serve as best practices to achieve program access for those elements which do not have formal ADA or Texas Accessibility Standards. Significantly, the title II regulations do not necessarily require every facility to be fully accessible. Conditions which are not consistent with ADA Standards but currently present no barrier to City programs may have a deferred priority in the City's Transition Plan.

Self-evaluation and Transition Plan

The following report documents the results of this evaluation and anticipates plans to ensure procedures and practices of the City's employees are, and will continue to be, compliant with the ADA and Transition Plan requirements. When structural changes to facilities are needed to achieve program accessibility, title II regulations require *a transition plan setting forth the steps necessary to complete such changes* (§ 35.150(d)(1)). The Transition Plan lists those noncompliant physical conditions which must be removed to ensure access to City programs, describes how they will be remedied, provides a schedule for completion of those remedies, and designates the individual(s) responsible for implementing the Plan (§ 35.150(d)(3)).

The Self-evaluation process covers much more than physical access and architectural barriers. The process is intended to perceive access to City services, programs, and activities, from the perspective of people with disabilities, realizing the differences in abilities among individuals. While removing physical barriers is necessary to ensure that all City programs, when viewed in their entirety, are accessible to and usable by qualified people of all abilities, providing auxiliary aids and services to achieve equally effective communication, allowing service animals in public spaces, and making reasonable modifications to policies and procedures are equally necessary actions to prevent inadvertent discrimination against people with disabilities.

ADA and Its Relationship to Other Laws

Except as otherwise provided in the Part 35 regulations of title II, the Part 35 regulations must not be interpreted to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973, or the federal regulations issued per title V. The Part 35 regulations do not invalidate or limit the remedies, rights, and procedures of any other federal laws, or State or local laws (including State common law) which provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them (see § 35.103). In Killeen, compliance is subject to both the ADA and the Texas Elimination of Architectural Barriers Act (EAB).

Requirement and Purpose of Self-Evaluation

Originally, title II of the ADA required state and local government entities with 50 or more employees to complete evaluations of their current services, policies, and practices, and the effects thereof, which did not or might not have met the requirements of the Part 35 regulations within one year of January 26, 1992). The regulations do not specify a requirement to refresh or repeat the Self-evaluation process. However, the title II regulations do require an ongoing effort to ensure that public programs, when viewed in their entirety, do not discriminate against people with disabilities. Reasonably, as most public entities engage in activities which alter their programs and facilities over time, the City is prudent to re-visit its previous evaluations to ensure that the City continues to comply with its title II prohibitions and obligations. MTC realizes that Killeen's agreement with the Department of Justice may have precipitated this effort.

As the City has an ongoing requirement to ensure compliance with title II, MTC has assisted the City to evaluate its current services, policies, and practices, and the effects thereof, which do not or may not meet the requirements of Part 35 and, to the extent modification of any such services, policies, and practices is required, the City will proceed to make the necessary modifications. In addition, the City will provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the Self-evaluation process by submitting comments. After receiving public comments, for at least three years following completion of the Self-evaluation, the City will maintain on file and make available for public inspection:

- (1) A list of the interested persons consulted;
- (2) A description of areas examined, and any problems identified; and

- (3) A description of any modifications made.

(See [§ 35.105 Self-evaluation](#).)

It is worth noting that many – probably most – of the necessary modifications which will be required, resulting from this process, will not be accomplished through physical barrier removal. Budgets will stretch much farther when the City can overcome barriers through modification of policies and practices rather than construction projects. For example, it may be possible to relocate some programs to accessible facilities or in some instances make a program virtually accessible on the City's website, rather than making structural changes to facilities.

Requirement and Purpose of Transition Plan

Originally the title II regulations required public entities with 50 or more employees, when structural changes to facilities were planned to achieve program accessibility, to develop within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. Such entities were required to 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. It was required also to have a copy of the transition plan available for public inspection.

In addition, public entities with responsibility or authority over streets, roads, or walkways, were required to include in their transition plans a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the ADA, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. By extension, as such walkways serve a public program (pedestrian transportation), the City is required to ensure that these facilities are accessible to and usable by qualified individuals of all abilities. The scope of the project, for which the services of MTC were contracted, does not yet include pedestrian facilities within the City's right-of way.

A transition plan must include:

i. Identification of physical obstacles in facilities that limit the accessibility of programs or activities to individuals with disabilities
ii. Detailed description of the methods that will be used to make the facilities accessible
iii. A schedule for taking the steps necessary to achieve compliance with the regulations and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of
iv. the transition period
v. Name the official(s) responsible for implementation of the plan

(See [§ 35.150 Existing facilities](#) (d).)

The City has an ongoing obligation to ensure that its facilities are and remain accessible to and usable by people with disabilities, and its new facilities and alterations to existing facilities completed since January 26, 1992, are required to have complied with the ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) prior to March 15, 2012, and the 2010 ADA Standards for Accessible Design (ADA Standards) since March 15, 2012. MTC has assisted the City with developing its updated Transition Plan. MTC has audited the City's facilities, including its parks, and analyzed existing conditions for compliance with the ADA Standards and, where relevant, the U.S. Access Board's ABAAS/ODA. Where possible to identify construction completed prior to March 15, 2012, the City may consider whether *safe harbor* provisions allowed in the Part 35 regulations might be applicable (*i.e.*, did design comply with ADAAG or UFAS at the time of construction?). Killeen has also been responsible for registering construction projects with the Texas Department of Licensing and Regulation (TDLR) and retaining the services of a Registered Accessibility Specialist (RAS) to conduct plan reviews and site inspections to verify that such construction conforms to TAS.

(See § 35.150 Existing facilities, (b)(2).)

Title II Services, Programs, and Activities

The title II regulations prohibit a public entity from excluding from participation in or denying the benefits of its services, programs, or activities to any qualified individual with a disability, or otherwise subjecting any qualified individual with a disability to discrimination. The City's programs may include recreation activities, City Council meetings, law enforcement/jail, various permits, motor vehicle services (such as, registration, title requests, and address changes), public records, tax collection (sales, use, property etc.), municipal court, volunteer opportunities, and many other services and activities. The City offers access to its services at 50 City buildings/facilities, 29 parks, and 3 paved trails. In addition, the public can access many of the City's services and programs online.

The City makes a good faith effort to provide reasonable modifications in policies, practices, and procedures, including auxiliary aids and services for effective communication, to ensure that its services programs and activities are accessible to and usable by qualified people of all abilities. MTC has assisted the City with updating its Transition Plan to ensure that physical/architectural barriers do not limit or prevent access to the City's services, programs, and activities.

(See § 35.130 General prohibitions against discrimination.)

Title II Administrative Requirements

As noted in the *Inventory and Review of Existing Policies* section, above, there are specific administrative requirements listed in Subpart A of the ADA's title II, Part 35 regulations covering state and local governments. The stated purpose of the title II regulations is to prohibit discrimination based on disability by public entities. Part 35 regulations apply to all services, programs, and activities provided or made available by public entities. Among the most significant requirements – for public entities with 50 or more employees – is the requirement to conduct a Self-evaluation. The other foundational administrative

requirements are the ADA Notice, naming of an ADA Coordinator, and adoption of an ADA complaint/grievance procedure.

Notice

Each state or local government must make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of the Part 35 regulations and its applicability to its services, programs, or activities, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the ADA and the Part 35 regulations. While this requirement does not stipulate how or where this information must be made available, it seems reasonable, at present, to consider that this notice should appear and be readily accessible on public websites. In addition, in a public facility where policies addressing the conditions for public presence in or use of the facility are posted, the ADA Notice should also be posted. When literature, announcements of meetings or events, catalogs of public programs, etc., are distributed or mailed to constituents, the ADA Notice should be included. The notice should apprise qualified individuals of how and where to avail themselves of auxiliary aids and services, including, but not limited to, accessing any devices necessary to using assistive listening systems in public assembly areas and courtrooms.

The City's ADA Notice is the template provided by DOJ. It is discoverable on the City's website.

Designation of ADA Coordinator (ADA Compliance Manager)

Public entities with 50 or more employees must name one or more employees to coordinate its efforts to comply with and fulfill its responsibilities under the Part 35 regulations. Those duties include any investigation of any complaint communicated to the entity alleging its noncompliance with the regulations or alleging any actions which would be prohibited by the regulations. The public entity must make available to all interested individuals **the name, office address, and telephone number** of the designated employee or employees. Reasonably, contact information provided today, will also include the ADA Coordinator's email address.

The City's ADA Coordinator, identified in the complaint procedure and complaint form, is not identified in the City's ADA Notice. For very practical reasons, it is essential that members of the public, including people with disabilities and organizations representing or advocating for people with disabilities be able to easily find and contact the City's ADA Compliance Manager (aka ADA Coordinator) when they have an ADA-related complaint or need to request an accommodation or modification of a policy or practice. The ability of the ADA Compliance Manager to resolve such issues, rather than having those issues presented to the TDLR or DOJ, can avoid difficult and potentially adversarial conflicts with people who have disabilities or the advocacy organizations who represent their interests.

The City's ADA Compliance Manager, Jolynn Jarnagin, is identified in the City's ADA Notice.

Complaint/Grievance Procedure

Public entities with 50 or more employees must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action which would be prohibited by the Part 35 regulations. The regulation does not give a specific timeframe to define prompt resolution. From settlement agreements and other DOJ guidance and opinions, MTC has inferred that a public entity can require such complaints to be reported within 60 days, that a public entity must meet with the complainant within 15 days after the report, provide a documented response within 15 days of receipt, allow and accept an appeal (should the complainant disagree with the initial response) within 15 days of the initial resolution, meet with the complainant again within 30 days, and provide a documented response to the appeal within 30 days.

In the event of an appeal, the final resolution must be decided by an individual (or group) who was not a party to the original resolution. Documentation of the complaint and responses must be retained by a public entity for a minimum of three years.

The City's complaint procedure is consistent with DOJ practice and guidance. The procedure and complaint form are discoverable on the City's website, but the fillable form (PDF) is not fully accessible.

Evaluation of Policies, Practices, and Procedures

MTC has assisted the City with an evaluation of its policies, practices, and procedures to identify any which do not or may not meet the requirements of the Part 35 regulations. To gain an understanding of the methods and means the City uses to ensure that its services, programs, and activities are accessible to qualified people of all abilities MTC engaged in interactive tasks with the City's management and staff. The tasks included:

- An inventory and review of the City's ADA-related policies, including recommendations for improvement of existing policies and the addition of new policies/guidance documents to inform ongoing compliance with ADA requirements and prohibitions
- Evaluation of public/program access to all areas of City facilities
- Interviews of members of City management
- A survey of City staff
- Testing of the City's website/digital services by MTC staff and contractors with various sensory and mobility limitations

Inventory and Review of Existing Policies

The Part 35 regulations clearly require three minimal policy documents or formal resolutions of state and local governments:

1) Notice of nondiscrimination based on disability
2) Naming an individual to coordinate efforts to comply with the ADA (i.e., ADA Coordinator)

3) Complaint/grievance procedure

MTC's policy inventory identified that the above documents exist and are available on the City's website. The name (Jolynn Jarnagin), address, phone number, and email address of the City's ADA Coordinator, while not specified in the City's ADA Notice, are provided in the City's ADA Complaint Procedure and ADA complaint form. However, the online complaint procedure and form (PDF) are not fully accessible.

See the Americans with Disabilities Act Policies Inventory and Review (July 26, 2022) report for details.

Recommended Policy/Guidance Templates

MTC recommends at least eight additional policies and documents, mirroring specific prohibitions or requirements stated in the title II regulations. MTC has provided templates for these policies to the City. MTC understands that it may not be feasible to adopt all these templates as formal/legally adopted policies but recommends, at minimum, that the City compile them into an ADA guidance manual for the benefit of employees. MTC recommends distributing hard copies to all departments and providing online access to this ADA guidance manual for all employees. Besides the three required administrative documents, MTC recommends the following list of policy/guidance templates:

- Self-Evaluation (§35.105)
- General program access (§35.130)
- Contractor Reps & Certs (§35.130(b))
- Reasonable modification program policy (§35.130(b)(7))
- Eligibility criteria (§35.130(b)(8))
- Service animal policy (§35.136)
- Powered mobility policy (§35.137)
- Ticketing policy (§35.138)
- Equal employment policy (§35.140)
- Reasonable accommodation in employment (§1630.9)
- Effective communication policy (§35.160)
- Transportation access policy (§37.5)
- Emergency management plan (see DOJ settlements per Project Civic Access)
- Information & Communication Technology Accessibility (see DOJ settlements per Project Civic Access)

The City should prioritize, ensuring that all public-facing employees receive ADA training and documented guidance on addressing potential requests for reasonable modification of policies and procedures or access by qualified people with disabilities. All recommended policy templates are provided in the Americans with Disabilities Act Policies Inventory and Review, see Appendix A.

Management Interviews

During July 2022, MTC conducted conversational interviews with managers to better understand their programs, particularly the programs of departments with public facing employees, and their obligations

to appropriately interact with members of the public who have disabilities. Public employees must ensure that interaction with people with disabilities is provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities (§ 35.130(d)). This requires public employees to offer, upon request, reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid disability-based discrimination (§ 35.130(b)(7)). Public-facing employees should receive enough training, appropriate to their duties, to be aware of and sensitive to individual needs, and to properly assist and treat individuals with disabilities in a respectful and courteous way, with proper attention to differences among people with disabilities.

Familiarity with the ADA

Most public employees do not routinely interact with or need to provide auxiliary aids and services for people with disabilities. Accordingly, public entities must have policies and procedures in place and provide training to employees to ensure they are prepared for those typically rare occasions when they are asked to provide a sign language interpreter or decide whether a dog is a service animal. These interviews serve to inform MTC of potential gaps in knowledge but can also provide informative dialogue for public employees.

An overview of the interviews suggests that most managers have significant understanding of the facets of the ADA related to their work activities. Those who work in human resources have comprehensive knowledge of the Equal Employment Opportunity Commission's rules for title I of the ADA. And supervisors who have participated in the interactive process of identifying Reasonable Accommodations which have allowed employees with disabilities to perform their essential job functions realize the value of keeping those employees. Those whose duties include supervising new construction, alterations, and maintenance of City facilities have good working knowledge of the ADA Standards. More than one manager reported previous experience in developing ADA transition plans for other title II entities.

On the other hand, those who have little or no face-to face contact with the public are not often aware of programmatic access requirements such as the need to reasonably modify policies and practices or to provide auxiliary aids and services to achieve equally effective communication with people whose disabilities include limited hearing, vision, or speech abilities.

ADA Complaints and Requests

In general, managers discussed their experiences with identifying Reasonable Accommodations for their employees more than making Reasonable Modifications of policies and procedures to provide access to members of the public who have disabilities. That said, knowledge of the City's improvements to public sidewalks to accommodate people with disabilities was rather common. While not always aware of the specific regulatory requirements, as a rule, interviewees demonstrated genuine concern for inclusion of people of all abilities in the City's programs. Some employees described their response to requests for accommodations and modifications, as being more intuitive than informed. The attitudes expressed by interviewees consistently demonstrated genuine concern for inclusion of people with disabilities in City's programs. In general, subjects demonstrated that ADA compliance tends to be inspired more by compassion and inclusiveness than risk management.

ADA Training

Several of those interviewed reported that they have received ADA-related training specific to their job duties, either during their tenure with the City, or during previous employment. Many interviewees expressed interest in additional training as topics of discussion ranged into areas of ADA requirements with which they were unfamiliar. Virtually all interviewees have positive attitudes and willingness to accommodate employees with disabilities and modify procedures and practices to make programs accessible for members of the public with disabilities. However, they are not necessarily aware of City policies which inform and guide their efforts.

Training is the key to preparing employees for situations and experiences which are not routine. Interaction with and modifying policies and practices for people with disabilities may typically be outside of standard operating procedures. The ADA requires adjustment to the needs of people on a case-by-case basis. Training is needed to prepare individuals for those (probably) infrequent situations when they will need to interact with individuals with disabilities in a respectful and courteous way, with proper attention to differences among people with disabilities.

While the focus of training should target the specific areas where an employee's duties will have the most impact on people with disabilities, every employee should receive training which provides an understanding of basic ADA concepts and disability etiquette/awareness. MTC offers disability etiquette and implicit bias training which can facilitate employee interaction with people of all abilities. Employees involved in various construction activities, from building maintenance and renovations to public sidewalk design and construction, should have training covering accessible design standards and guidelines. Those who coordinate public meetings must be aware of the wide range of auxiliary aids and services necessary to achieve effective communication with a diverse population of people with sensory, speech, and cognitive disabilities.

Every supervisor and employee should receive training covering the ADA title I rights of employees and responsibilities of employers. All should gain an understanding of the concepts of disclosure, verification, essential job functions, undue hardship, and the interactive process of identifying Reasonable Accommodations. Broad, mutual understanding of title I rules can defuse conflict and help to make the accommodation process a collaborative effort.

MTC informed interviewees that following the revision of existing and development of new ADA-related policies/guidance, all City employees will receive additional ADA training aligning with their duties. A suggested list of targeted training for specific categories of employees was provided to the City for further discussion.

Summary: Management ADA Interviews, MTC's observations from these interviews is provided in Appendix B.

ADA Staff Knowledge Surveys

Between August 2 and August 29, 2022, assisted the City with conducting a survey of City employees. The survey was deployed by the City via a link to Survey Monkey, provided by MTC. The purpose of the survey was to develop a better picture of City staff's knowledge, understanding, and attitudes about the ADA. That picture of their awareness provides an assessment of knowledge gaps and needs for targeted training which will help to ensure the City's ongoing compliance with title II. The survey received a statistically meaningful number of responses which came from a representative cross-section of the City's employees.

Implicit bias (unconscious prejudices) or misunderstanding, which may result in disability discrimination, present the greatest risk of noncompliance with the ADA for the City. The architectural barriers or even negligent policies or practices, which might prevent equal opportunities to access the City's services, programs, or activities for some qualified individuals with disabilities, are, by comparison, a much lower risk. MTC recommends interpreting the survey results without value judgement but as a tool to inform future training for City employees.

The most valuable piece of information gleaned from the survey is that many respondents indicated that they have insufficient knowledge and understanding of ADA requirements. This is a strong indicator that the City needs to give employees more guidance and training to ensure that they have the knowledge and understanding to successfully and consistently be inclusive of people of all abilities (and avoid noncompliance risk). Because most members of the City's staff do not serve or interact with individuals with disabilities on an every-day-basis, they may feel uncomfortable and unprepared for the typically rare occasions when they need to accommodate or effectively communicate with individuals who have disabilities. Disability awareness or disability etiquette and implicit bias training can provide a very constructive support for the City's staff.

Responses to the survey's final question (#35, which requested final comments) were mostly positive. The City's staff expressed interest in gaining more knowledge and guidance about the ADA and most would be very receptive to additional training on ADA topics.

A report, *ADA Staff Knowledge Surveys*, with comments and the survey results is provided in Appendix C.

Website and Digital Accessibility

Neither the original ADA regulations nor subsequent amendments to the regulations make specific reference to websites, digital documents, or streamed meetings. In the 21st Century, many public programs and services can be accessed on-line, and in some cases, only on-line. From applying for employment, to watching and listening to streamed public meetings, to registering for recreation programs and activities, a local government's programs – and therefor program access – relies on an accessible Internet. The legislators who created the ADA in 1990, could hardly have predicted at that time the magnitude of the impact and significance the Internet and websites would have thirty years later. In *Title II Regulations 2010 Guidance and Section-by-Section Analysis*, DOJ clearly considers websites to have accessibility requirements:

The Department has consistently interpreted the ADA to cover websites that are operated by public entities and stated that such sites must provide their services in an accessible manner or provide an accessible alternative to the website that is available 24 hours a day, seven days a week.[1]

Major Title II Concern

The Orlando Sentinel, reported as far back as January 2019, that many Florida municipal and City governments, including Orange, Palm Beach, and Seminole Counties had been sued for failure to make their websites accessible. Typical in these lawsuits were allegations that agendas and minutes of public meetings were not posted as screen-readable text or streamed and archived video of public meetings were not captioned.[2]

Effective Communication

The effective communication requirements of title II clearly require state and local governments to offer such auxiliary aids and services as are necessary to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. The City also must give *primary consideration* to the requests of individuals with disabilities. Bearing in mind that the authors of the ADA had no idea that today most day-to-day communications between public entities and their audiences would be channeled through the Internet, it is obvious that the requirements are equally applicable and enforceable for websites and other digital/electronic communications.

Assessment of Website for Compliance with WCAG 2.1

The evaluation of website compliance typically begins with an assessment of conformance to the Web Content Accessibility Guidelines 2.1 (WCAG). MTC did not conduct an assessment to determine whether various features of the City's website passed the WCAG success criterion. The City waived this assessment as it had already completed the assessment following its agreement with DOJ.

User Testing

Stemming from the historic axiom of the disability community – *Nothing About Us Without Us* – it is critical to have people with disabilities participate in the assessment of the accessibility of websites and other digital communications of public entities. MTC engaged the services of people with disabilities – including one who is blind, one who has low-vision, one who is deaf, and one who has limited manual mobility/dexterity – to access and interact with the City's website and report their experience. Naturally,

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[1] U.S. Department of Justice accessed at https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a2010guidance, on September 15, 2022.

[2] 2 Orlando Sentinel, "Local governments on alert over lawsuits targeting ADA violations over website documents," accessed at https://www.orlandosentinel.com/news/os-ne-ada-lawsuits-blind-local-governments-20190104-story.html, on September 15, 2022.

barriers which limited access to one tester did not necessarily impact another. Lack of captions on streamed audio was not a problem for the tester who is blind but can hear. The absence of alternative text (alt-tags) on pictures was not a barrier for the tester who is deaf but can see.

User testers were not engaged to discover and identify technical failures to comply with WCAG but often the technical audit pointed to specific failure of a success criterion which aligned with tester experience. For example, the WCAG audit discovered failure to provide compliant contrast between text and background colors, (WCAG 1.4.3) which was a problem obvious to the tester who has low-vision. Frequently, the testers remarked on features or structure of a webpage that were difficult to use even though the design may not technically fail a WCAG success criterion.

There were often difficulties experienced by testers that may not result from a specific WCAG success criterion failure. While testers were asked to use more than one browser in their testing, assistive technologies, such as JAWS (Job Access With Speech), may work well with a limited number of browsers. Because different browsers may present the same HTML code differently, the experience of a tester may vary significantly from browser to browser.

Digital Accessibility Training

Though it was not included in the scope of this project, MTC can provide training on the creation of accessible digital content. MTC hosts an online *Document Accessibility* training module on its Rocky Mountain ADA Center website, which can be accessed free of charge. The City would be prudent not only to ensure that new content to be published on its website is accessible but also to devise a strategy for remediating existing/archival content, such as PDF files which have been scanned and uploaded, which is not compliant. A successful strategy would include prioritizing the remediation of documents and other content most frequently accessed and/or downloaded from the City's website.

See the *Combined Website Testers Report*, summarizing the website tester observations is available in Appendix D.

Approach to Facility Access Assessment

Data Collection

MTC collected data – dimensional and slope measurements and observations – at 50 City buildings/facilities, 29 parks, and 3 paved trails. The data documents the existing conditions related to rooms/spaces and elements with accessibility requirements. MTC staff used electronic tablets to enter the data into a database where measurements and observations are compared to the technical criteria for compliance with ADA Standards and TAS. When existing conditions are not consistent with the ADA Standard's scoping or technical provisions, they are labeled *Compliant – No*. When existing conditions are not consistent with the ADA Standard's or TAS advisory provisions, they are labeled *Compliant – Not Best Practice*, as advisory content in the ADA Standards and TAS is not technically enforceable. When existing conditions are not consistent with ABAAS/ODA scoping or technical provisions, they are labeled *Compliant*

– *Not Best Practice*, as ABAAS/ODA standards are federal standards which DOJ has not yet issued under Part 35 regulations for title II of the ADA.

ADA Standards and TAS are applicable to buildings and sites, including most outdoor elements at parks, and open spaces. Where outdoor elements are not specifically addressed in the ADA Standards or TAS, the Architectural Barriers Act Accessibility Standards (ABAAS) for Outdoor Developed Areas (ODA) have been applied as best practices established by the U.S. Access Board.

ADA Standards provide the most-applicable technical provisions for *Parking Facilities*; the ABAAS-ODA provides the most-applicable technical provisions for *Picnic Units*. Where applicable standards have not yet been adopted for ADA, these federal standards do serve as the best practices to ensure that structural barriers do not limit or prevent program access required by title II.

MTC has compiled and delivered the results of the data collection (and subsequent data analysis) to the City in the form of the Accessibility Compliance Data Table (ACDT, an Excel data table). See Appendix E. *City of Killeen ACDT_19sep2022*.

Data Analysis

MTC accessibility analysts reviewed all attributes and elements for which automatic compliance determination was not possible. The analysts made those determinations and added findings to the raw ACDT. The analysts also added recommendations for remediation of findings, citations to the ADA Standards (or other guidelines where appropriate), estimated mitigation difficulty, and a calculation of relative priority, expressed as *Priority*, to the ACDT. This information is the basis for the three of the four minimum requirements of a Transition Plan (see § 35.150 Existing facilities (d)). MTC can evaluate priorities, but we cannot set schedules which depend on the City's budgets and other resources. MTC provides *Priorities* as a relative sequence for scheduling completion of barrier removal. MTC developed this prioritization approach from our observation of schedules set by DOJ in its settlement agreements with state and local governments, applying a more pragmatic understanding of construction lead times and schedules. MTC cannot assign the individual(s) responsible for implementing (the 4th requirement of) the Transition Plan.

MTC acknowledges that its approach to prioritization and scheduling of barrier removal is abstract and arbitrary. City staff, based on public input, and organizational knowledge of the public use of facilities and spaces, will need to identify locations where removal of barriers can provide the greatest benefit to the most people. A human-centered approach is necessary to practical and cost-effective implementation of the City's Transition Plan.

In some instances, MTC may suggest that it is prudent to remove a program from an inaccessible space or to modify practices rather than removing a structural barrier. MTC can make recommendations but cannot make these critical decisions for the City. Budgets will stretch much farther when the City can overcome barriers through modification of policies and practices rather than construction projects.

Analysts also performed quality control by reviewing photos and normalizing data. Analysts edit comments, descriptions, and recommendations for accuracy and consistency. The final draft of the ACDT for buildings/facilities, consists of 31,103 lines of data, each line representing a measurement, count, observation or other information necessary to identify conditions that do not conform to the ADA Standards, TAS, etc. There were 6,188 attributes not consistent with ADA Standards or TAS, i.e., *Compliant – No*. And 37 other findings were considered as *not best practice*. After eliminating the findings that were not barriers to program access[3], the number of findings was reduced to 4,635 findings that are or might be barriers to program access (of these 33 are *not best practice*). These must be addressed in the Transition Plan.

Prioritization

The most important and most difficult phase of developing a Transition Plan is composing a realistic and practical schedule for the implementation of the Plan. The first step in that process is informed by the nature and location of findings in the ACDT.

There are five factors used to calculate the Priority of each finding. As noted above, absent the need to provide program access, priorities based on other factors are null. The factors and the calculation for assigning priorities is detailed in the ACDT, see the Facility Priority tab. The most critical factor in prioritization is the location of a finding. However, regardless of how important the removal of a barrier to programmatic access, mitigation difficulty – such as the cost, the need for a remedial design, and the expected disruption to operations during reconstruction – will inevitably result in even high priority findings being scheduled further into the future.

The nature of a finding suggests the magnitude or severity of a barrier – that is, how difficult and/or dangerous it might be for a person with a disability to overcome the barrier. For example, stairs where there ought to be an accessible route are an insurmountable barrier for a wheelchair user and an object, such as a shelf (deeper than four inches and between 27 and 80 inches high) in a hallway can be a hazard for an individual who is blind.

The location of a barrier speaks to the primary concern of program access. The purpose of a Transition Plan is to ensure that a public entity can operate each of its services, programs, or activities, when viewed in their entirety, in a way which makes them readily accessible to and usable by individuals with disabilities. This does not require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities. However, architectural conditions, *i.e.*, barriers, which prevent or might prevent or limit access to a program, must be included in a Transition Plan. The location of barrier, for example, an inaccessible shower compartment at a public swimming pool, or one in the locker room at the police station, says much about whether it prevents or might prevent access to a program.

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[3] These findings note conditions which are not consistent with the ADA Standards, but which do not (due to their locations) currently limit or prevent program access by people with disabilities. Future actions to remedy these conditions are contingent on circumstances, such as an employee request for reasonable accommodation, which could trigger the need to provide access.

Nonconforming conditions or potential barriers – based on their location and the degree, frequency, or amount of public access expected at that location – which have negligible probability of impeding access to programs, have little or no priority for remediation in a Transition Plan, regardless of magnitude or severity. These findings should be listed in a Transition Plan, though they typically will not need to be scheduled until a significant event or action triggers the need to resolve them. The events or conditions which might trigger the need to fix these findings, in the future, include the following:

- Need to remove a physical barrier as a title I Reasonable Accommodation for an employee
- Location of a new or existing program to this room/space
- Renovation/alteration of the space
- Alteration of a primary function area triggering path of travel barrier removal
- Discovery that a nonconforming condition was designed/built by construction or alteration after January 26, 1992 construction or alteration (or in violation of Texas EAB)
- A specific request/complaint from the public

Developing a Practical Schedule for a Transition Plan

Having a working understanding that program-access-generated priorities are a prerequisite of a practical schedule is the reason that priority matters. Clustering the various barriers to be removed into a coherent group of practical projects comes next. The clustering process should consider where specific barriers could be included in previously scheduled capital improvement projects, possibly for a minimal increase to budgets. Group findings which are high priority but low mitigation difficulty (*i.e.*, do not cost much, take much effort, or cause redundant need for barrier removal) into a regular repair and maintenance schedules. For example, make it a routine practice to test and adjust opening forces and closing speeds for all interior doors with closers.

MTC has provided opinions of probable constructions costs (OPCCs). These budget-level estimates of the cost to complete each barrier removal project are necessary when larger projects require funding appropriations prior to requesting proposals. The planning of larger projects beyond available funding resources must anticipate plans for re-design, the bid process, actual construction time, and, in the case of remodels and renovation, disruption of normal operations. Regardless of priority, major barrier removal projects can seldom be started, let alone completed, in the first year of a Transition Plan.

Draft Transition Plan for Public Comment

This summary report and the ACDT provide the essential content necessary for drafting an ADA Transition Plan, however, the actual Plan must be drafted with input from City staff, as integration of the Plan into the City's budget is an internal function. MTC can assist with a segmentation of its findings in the ACDT. The OPCCs provided in the ACDT are available to inform City staff in integrating the Plan into the City's budget cycles.

Public Outreach

Outreach for public comments on the Self-Evaluation and Transition Plan process will follow approval of a draft of this report and a draft Transition Plan. Following the gathering public comments, documentation of those comments will be summarized in this report and detailed in an appendix. Where appropriate the City will incorporate those comments by revising schedules and/or adding elements to this evaluation and the Transition Plan.

The City must provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of its ADA Transition Plan by submitting comments. A copy of the Transition Plan must be made available for public inspection. MTC recommends presenting the Plan in more than one public meeting, as well as an online portal. All comments should be recorded, retained, and considered before completing the final draft of the Transition Plan. Reasoned evaluation of public input should inform the final Transition Plan and this opportunity can establish public ownership of the plan.

Contingencies, such as emergencies, budget shortfalls, and weather, may affect the most practical of plans. A formal Transition Plan composed of, at minimum, the four requirements of the Part 35 regulation should be adopted with provisions for ongoing monitoring of progress (which can be documented in the ACDT) and periodic updates in the event of unforeseen contingencies. A living, editable version of the ACDT should be maintained as a data table which can be updated or amended as barriers are removed or program access is achieved through methods or means other than structural barrier removal.

MTC has suggested a list of questions to facilitate the gathering of public comments on this report and the Transition Plan. This list of questions is available in Appendix F.

Summary of Recommendations

This section will summarize recommendations made throughout this report.

Policies, Procedures, and Practices

MTC provided a comprehensive set of ADA related policy/guidance documents which align with specific sections of the Part 35 regulations (i.e., requirements and prohibitions) for the enforcement of title II of the ADA. These documents are recommended for the development of new policies or an ADA guidance manual for City employees. This recommendation is made with the realization that adopting formal policies is a cumbersome process, subject to legal analysis and review, which may require a protracted period to complete. MTC has also recommended minor revisions to existing policies. The intent of these policies/guidance documents is to ensure that City employees have documentation to support their actions when interacting with members of the public who have disabilities. The City should decide whether these documents will be formal adopted policies or less formal internal guidance for employees. If these become formal policies, they should be available to the public in multiple formats including an ADA compliance section on the City's website.

Title II regulations specifically require three administrative documents:

- Notice of nondiscrimination based on disability [§35.106]
- Designation, *by name*, of an ADA Coordinator [§35.107(a)]
- Complaint Procedure [§35.107(b)]

Each department or facility may find it useful to develop department-specific procedures to implement City-wide polices. These procedures will serve to inform practices unique to a given program or facility. For example, there are areas where service animals or other power-driven mobility devices may be excluded or restricted – based on fundamental alteration, financial and administrative burdens, or legitimate safety requirements. Service animals can be excluded if they are not housebroken or under the control of their handlers.

Training

New or updated policies or an ADA guidance manual can serve as the basis for employee training – establishing the rules of engagement for ADA-related interaction with the public. At minimum, all employees should receive disability etiquette/sensitivity training to inform and enhance their interaction with people who have disabilities. Training will prepare City staff for the relatively few encounters they may have with people who have disabilities.

Results of the staff ADA survey suggest specific target areas for training. MTC can provide training in various modes: in-person, face-to-face (post pandemic) sessions; live and archived webinar presentations; and website-based training modules allowing self-paced progress. The Rocky Mountain ADA Center at MTC offers a number of these modules which can be accessed free of charge. Optionally, the City can subscribe to receive documentation of each employee's progress. This option can be implemented by migrating the modules to the City's learning management system or by having employees register and login to modules on the ADA Center website.

Auxiliary Aids and Services for Effective Communication

Resources for auxiliary aids and services should be readily available and should be kept current by conducting periodic reviews. Compile and distribute resources specific to auxiliary aids and services which will be needed to provide equally effective communication:

- Sign language interpreters
- Braille printing services
- Assistive technology
- Knowledge of assistive listening systems (ALS) in assembly areas/courts[4]
- Awareness/training regarding Relay system
- Real-time captioning services
- Audio description services

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[4] Among other sources, Purple Communications and Sennheiser offer wi-fi -based ALS.

- Creation of accessible documents, such as tagged PDF files, audio recordings, and large-print documents

The ADA Standards require appropriate signs to direct those who need to use ALS to an individual responsible for ensuring effective communication access.

Implementing the Transition Plan

For identified barriers: develop a process for evaluating priority for eliminating barriers; where possible, through means other than architectural/structural barrier removal. Identify low mitigation difficulty barriers which can be resolved through in-house maintenance and repair activities. These include minor tasks such as regular measuring and adjusting opening forces and closing speeds on interior doors. Facility maintenance staff should be trained to recognize noncompliant conditions which can be corrected with little effort or cost.

MTC has provided an Excel data table which serves as Accessibility Compliance Data Table (ACDT). As the City moves forward to implement its Transition Plan, the ACDT serves not only as a compilation of all the findings and recommendations for removing barriers to program access but as a living document where adjustments to the Transition Plan schedule and completion of barrier removal tasks can be updated.

Buildings/Facilities and Parks

Going forward, as important as it is to remove existing barriers to program access, preemptive prevention of the construction of new barriers is imperative to achieving the goal of accessibility envisioned and intended by the ADA. The City should develop standards for construction of new/alteration of existing buildings and facilities which address, at minimum, the following:

- Conventional industry tolerances (expectation of inspector enforcement/contractor compliance)
- Design standards which anticipate construction tolerances (e.g., design cross slopes to 1.5 percent)
- Process for identifying those specific locations where existing physical constraints prevent full compliance (including, but not limited to, underlying terrain, right-of-way availability, underground structures, adjacent developed facilities, drainage, or the presence of a notable natural or historic feature)
- With respect to alterations and improvements to existing facilities, consider program access as the highest priority for determining whether and when physical barriers must be removed; remember the ongoing obligation to maintain accessible features/elements (including accessible parking, curb ramps, public sidewalks, etc.)
- Apply accessibility standards in new construction and alterations to employee common areas and circulation paths
- Minimum design standards, guidelines, and advisory comments for best practices for the Transition Plan are derived from the *2010 ADA Standards for Accessible Design*

Public Engagement

Input from the public is required (§35.150(d)(1)) and essential to the evaluating Transition Plan priorities. It is also important to facilitate ongoing input from the public to identify new or previously unidentified barriers to program access. Develop procedures, including public outreach, to ensure that the public knows, how to:

- Report barriers
- Request accommodations
- Request auxiliary aids and services
- Contact the ADA Compliance Manager
- File a formal complaint

The regulations also require the City to *provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments* on this document (§35.105(b)).

Soliciting and collecting public comments on preliminary findings may be difficult during the current limitation on public gatherings during the periodic surges of the COVID-19 pandemic. Technology supporting effective and accessible virtual meetings has become commonplace in recent years. However, many lack the hardware or Internet access or bandwidth to take advantage of streamed or archived online meetings. The normal opportunities to access shared wi-fi services at libraries and coffee shops may no longer be an option. MTC can assist the City to explore other non-virtual options for gathering public comments.

Other Best Practices

Develop a process of documenting all instances where members of the public (including, but not limited to, persons with disabilities) can request an (ADA-related) accommodation or identify any barrier (physical or procedural) which prevents or limits access to City services, programs, activities, or facilities. To do this effectively, staff must be trained to proficiency, as appropriate to their duties, so that they properly assist and treat people with disabilities who participate in City programs in a respectful and courteous way, giving appropriate attention to the difference among people with disabilities.

Appendix

    A. Policy Report and templates
    B. Management Interviews Report
    C. Staff Survey Report
    D. Website Tester Report
    E. Accessibility Compliance Data Table (ACDT)
    F. Recommended Questions for Public Engagement