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**Title:** Adoption of the 2016 Updates and revisions to the Americans with Disabilities Act (ADA) Transition Plan for the Public Right of Way

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**Attachments:** 1. Americans with Disabilities Act Transition Plan for Right of Way 2016.pdf, 2. Appendix A Curb Ramp Amended Transition Plan 2003.pdf, 3. Appendix B COF Design Exception -Technically Infeasible Form FINAL 2015.pdf, 4. Appendix C Sidewalk Notice to repair TEMPLATE.pdf, 5. Appendix D APSPolicyFINAL72009.pdf, 6. Appendix E DAC minutes from 09-08-15, 10-13-15.pdf

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**REPORT TO THE CITY COUNCIL**

**February 25, 2016**

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**SUBJECT**

Adoption of the 2016 Updates and revisions to the Americans with Disabilities Act (ADA) Transition Plan for the Public Right of Way

**RECOMMENDATION**

It is recommended that the City of Fresno adopt the 2016 updates and revisions to the Americans with Disabilities Act (ADA) Transition Plan for the Public Right of Way (ROW).

**EXECUTIVE SUMMARY**

The Americans with Disabilities Act (ADA) is a civil rights law for persons with disabilities. The ADA states that its purpose is to provide a “clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” This update and revision to the ADA Transition Plan for the Public Right of Way is prepared in fulfillment of the requirements set forth in Title II of the ADA. The ADA states that a public entity must provide programs, activities and services in such a way as to avoid discrimination against people with disabilities.

The City has made a significant and long-term commitment to improving the accessibility of the ROW. The goal of the 2016 update to the ADA Transition Plan for ROW is to ensure that the City continues to maintain accessible paths of travel in the ROW for people with disabilities. This Transition Plan describes the City’s existing programs, standards, policies, and procedures that collectively form a comprehensive program that incorporates accessibility into ROW throughout the City.

Additional funds are not sought with the adoption of this plan. The City’s ADA Infrastructure Compliance and Concrete Repair programs incorporate existing funding for curb ramp and concrete construction in each year, funded through Gas Tax, Measure “C”, and Capital Improvement accounts.

## **BACKGROUND**

The federal statute known as the ADA, enacted on July 26, 1990, provides comprehensive civil rights protections to persons with disabilities in the areas of employment, state and local government services, access to public accommodations, transportation, and telecommunications. Title II of the ADA specifically refers to state and local government programs, services and activities.

Title II of the ADA (28 CFR § 35.150 (d)) requires that state and local entities develop a Transition Plan specific to curb ramps:

... If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

- (3) The plan shall, at a minimum -
- (i) Identify physical obstacles in the public entity’s facilities that limit the accessibility of its programs or activities to individuals with disabilities;
  - (ii) Describe in detail the methods that will be used to make the facilities accessible;
  - (iii) 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
  - (iv) Indicate the official responsible for implementation of the plan.

In 2002, the United States Court of Appeals for the Ninth Circuit, whose jurisdiction includes California, held for the first time that sidewalks constitute a service, program or activity of a city, and

sidewalks are therefore subject to the ADA's program accessibility regulations (*Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002)). Before the *Barden* decision, the law was unclear whether municipalities' transition plans should address barrier removal from sidewalks.

Following the adoption of the ADA, the City conducted a Self-Assessment and determined that existing curb returns which did not include curb ramps constituted physical obstacles that potentially limited the accessibility of people with disabilities. In 1995, the City sought to determine the number of curb ramps which existed within the City which did not contain curb returns. The City estimated the number of curb returns which needed to be installed by utilizing aerial photographs to sample the number of existing curb returns which did not contain curb ramps. From that data a transition plan was developed.

Between 1995 - 2000, the City budgeted approximately \$75,000 per year to construct curb ramps at locations where they did not exist. At this funding rate, it was estimated that the City would require approximately 127 years to complete new curb ramp installation. In order to expedite the construction of curb ramps, the City increased annual budgeting in fiscal year 2001 for the construction of curb ramps. At the same time, the City adopted a resolution requiring the installation of curb ramps as part of the repaving or resurfacing of City streets.

In 2002, the City conducted an updated physical inventory of all curb returns which require the installation of a curb ramp, and used that inventory to develop the ADA Infrastructure Compliance Program and Amended Curb Ramp Transition Plan of 2003. In 2007 the City was again surveyed, with the data from that survey providing the baseline for the Geographic Information System (GIS) database and asset mapping that is currently used.

As priorities and funding sources evolve, the City must periodically update its ADA Transition Plans. The 2003 Revised Curb Ramp Transition Plan is updated and revised with this 2016 version. This ADA ROW Transition Plan reflects current policies and programs in place to enhance accessibility in the public ROW.

The City Attorney's office has reviewed the plan and approved as to form.

## **ENVIRONMENTAL FINDINGS**

By the definition in the California Environmental Quality Act (CEQA) Guidelines, Section 15378, the adoption of the plan does not qualify as a "project" as defined by CEQA.

## **LOCAL PREFERENCE**

Local preference was not considered because the adoption of the plan does not include a bid or award of a construction or services contract.

## **FISCAL IMPACT**

The City's ADA Infrastructure Compliance and Concrete Repair programs incorporate existing funding for curb ramp and concrete construction in each year, funded through Gas Tax, Measure "C", and Capital Improvement accounts. Additional funds are not sought with the adoption of this plan.

Attachments:

ADA Transition Plan for the Public Right of Way

2002 Amended Curb Ramp Transition Plan

Right-Of-Way Design Exception for Technical Infeasibility Form

Template Notice to property owner of obligation to repair sidewalk

2009 APS Policy

DAC Minutes from September 8, 2015 and October 13, 2015