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## REPORT TO THE CITY COUNCIL

**September 22, 2016**

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## SUBJECT

Adoption of the Americans with Disabilities Act (ADA) 2016 Facilities Transition Plan (Citywide)

## RECOMMENDATION

It is recommended that the City of Fresno adopt the 2016 Facilities Transition Plan and prioritize funding, in subsequent budget years, to fully fund each phase of the plan through its completion.

## 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 ADA Facilities Transition Plan is prepared

in partial 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. This report will assist the City of Fresno in identifying physical barriers to accessibility and in developing barrier removal solutions that will facilitate the opportunity of access to all individuals.

The current cost estimate for ADA barrier removal in these 18 facilities is over \$13,000,000 and the proposed plan spreads these costs over 16 years. The City must have an up to date Transition Plan to fulfill our obligations under the ADA.

This plan describes the process by which selected facilities were evaluated for compliance with the ADA, presents the findings of that evaluation and provides recommendations for facility improvements. The City must adopt a schedule, and supporting funding, for improving access for people with disabilities in 18 of its facilities.

The ADA Facilities Transition plan measures, identifies, and develops prioritization schedules for removal of existing physical barriers to access. This plan, which includes nine community facilities, should be considered and implemented in conjunction with the Parks Master Plan, which is currently in development.

## BACKGROUND

The development of a Facilities Transition Plan is a requirement of the federal regulations implementing the Rehabilitation Act of 1973 which require that all organizations receiving federal funds make their programs available without discrimination toward people with disabilities. The Act, which has become known as the “civil rights act” of persons with disabilities, states that:

*No otherwise qualified handicapped individual in the United States shall, solely by reason of handicap, 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. (Section 504)*

Subsequent to the enactment of the Rehabilitation Act, Congress passed the Americans with Disabilities Act (ADA) on July 26, 1990. Title II of the ADA covers programs, activities, and services of public entities. The Department of Justice’s Title II regulation adopts the general prohibitions of discrimination established under Section 504 and incorporates specific prohibitions of discrimination for the ADA. Title II provides protections to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of Title V of the Rehabilitation Act.

Specifically, the City may not, either directly or through contractual arrangements, do any of the following:

- Deny persons with disabilities the opportunity to participate as members of advisory boards and commissions;
- Deny persons with disabilities the opportunity to participate in services, programs or activities

that are not separate or different from those offered others, even if the City offers permissibly separate or different activities; and

- In determining the location of facilities, make selections that have the effect of excluding or discriminating against persons with disabilities.

Title II of the ADA requires that public entities identify and evaluate all programs, activities and services and review all policies, practices and procedures that govern administration of the entity's programs, activities and services.

The City was to have surveyed, developed, and approved a transition plan listing each physical barrier with a year-by-year schedule for barrier removal and the opportunity for people with disabilities to provide input on the plan by July 26, 1992. This plan was to have been implemented and completed by January 26, 1995, or as expeditiously as possible. To date, the City of Fresno has not fulfilled these obligations.

In 2006, the consulting firm of Moore, Iacofano and Goltsman (MIG) was awarded a contract to survey 14 key City facilities and develop a "Facilities Transition Plan" database that could incorporate information for all City facilities serving the public. The fee for these services was \$156,910. In 2008, MIG began the surveys and in 2008, their contract was amended to include additional facilities and provide training to City staff for an added \$54,010.

From 2006 to 2009, the City of Fresno conducted a physical audit of select City facilities to identify facility barriers and identify recommendations and alterations in order to meet state and federal accessibility standards. The list of facilities surveyed includes:

- City owned buildings; and
- City programs housed in leased facilities.

The Transition Plan lists, prioritizes and sets forth a schedule for the physical changes that must be made in order to provide programmatic access to City programs, activities and services as well as planning level cost estimates for each item. This report, and certain documents incorporated by reference, establishes the City's ADA Facilities Transition Plan.

The Facilities Transition Plan includes the findings made during the facility surveys. The specific architectural modifications required to make programs accessible are listed in the City of Fresno-Facility Reports. Each facility report contains a list of architectural barriers and barrier removal actions. Not all of these barriers must be removed in order to provide program access. The first priority is to remove those barriers limiting access to programs.

MIG completed the facility surveys and presented a progress report to the City of Fresno Disability Advisory Commission (DAC) on May 11, 2009. Public meetings to review the 2016 ADA Facilities Transition Plan schedule for barrier removals and provide public feedback on the plan and priorities were again held on February 10, 2015, and March 10, 2015. Public participation included persons with disabilities.

The most likely risk if this plan is not adopted and enacted is the potential to be challenged through private litigation. There are a number of individuals who derive an income from filing and settling lawsuits based upon violations of the ADA and the California Unruh Civil Rights Act. The ADA is a civil rights law, so each individual barrier to access represents a single civil rights violation in California. The Unruh Civil Rights Act sets the minimum monetary damages at \$4,000 for each violation.

The second risk is in the form of a U.S. Department of Justice (DOJ) compliance review and settlement agreement. Project Civic Access is a program of the DOJ that conducts ADA compliance reviews of cities and counties throughout the United States under the authority of Title II and, in many cases, Section 504 of the Rehabilitation Act of 1973. Project Civic Access now includes over 200 settlement agreements, the majority of which occur in cities and towns, because they represent the most common form of local government. The DOJ activities clearly show it puts a high value on a transition plan that is up-to-date.

In order to complete the Facilities Transition Plan, the City must adopt a schedule, and supporting funding for removing barriers and improving access for people with disabilities in 18 of its facilities over the next 16 years. In addition, the City must distribute the Facilities Transition Plan for public review when requested and track its implementation.

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

Staff is recommending that the City Council adopt the 2016 Facilities Transition Plan and prioritize funding, in subsequent budget years, to fully fund each phase of the plan through its completion.

## **ENVIRONMENTAL FINDINGS**

The adoption of the transition plan is not a "project" pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378.

## **LOCAL PREFERENCE**

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

## **FISCAL IMPACT**

In 2009, MIG provided City staff with plan level cost estimates for removing barriers at 18 City facilities with the estimated cost totaling over \$6,000,000, not including soft costs or account for escalating construction costs. Factoring in escalating costs using the California Construction Cost Index (CCCI), design, contract administration and other administrative costs the current estimated cost will total over \$13,000,000. The proposed schedule for removing barriers spreads the costs over 16 years, with the lowest cost in the first two years.

Funding sources must be determined by the associated departments and may include, but not be limited to, the General Fund, Grant Funds and the General Reserve ADA Improvement Fund. Each relevant department for the listed facilities will be responsible for budgeting, coordination and administration of facility improvements.

Attachments:

2016 ADA Facilities Transition Plan

Appendix A ADA Barrier Removal - Part 1

Appendix A ADA Barrier Removal - Part 2

Appendix A ADA Barrier Removal - Part 3

Presentation