

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



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September 10, 2018

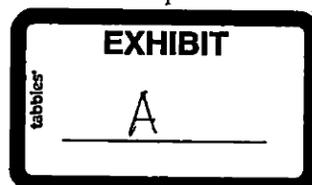
Mr. Paul D. Degges, P.E.
Tennessee Department of Transportation
Deputy Commissioner/Chief Engineer
Suite 700, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-1402

Re: Request in your letter of November 14, 2016 for a letter Outlining the Development of the Transition Plan of the Metropolitan Government of Nashville and Davidson County, Tennessee

Dear Mr. Degges:

The Metropolitan Government of Nashville and Davidson County (Metro) is committed to complying with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Sections 12101-12134 (Title II or the ADA), and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 (Section 504), and the regulations related to both. Metro has in place policies, procedures, and personnel to ensure all programs, services, and activities, when viewed in their entirety, provide equal access to all individuals, including people with disabilities.

In January 2000, Metro voluntarily contacted the United States Department of Justice (DOJ) to negotiate a voluntary compliance agreement. On July 25, 2000, Metro entered into an Interim Agreement with the DOJ. Pursuant to the Interim Agreement, Metro conducted a self-evaluation of the accessibility of its programs and services, which included conducting an extensive inventory of the existing Metro public sidewalks, completed in 2002. This self-evaluation eventually resulted into a Transition Plan and Settlement Agreement that was entered into between Metro and the DOJ on June 24, 2003. While this agreement was in place, Metro submitted annual reports to the DOJ. Section VIII of the Final Transition Plan (copy attached) addressed "Barrier Removal and Compliance Strategies for Public Rights-of-Way." This agreement remained in place through June 2015, at which point it was terminated, in accordance with its terms, on the grounds that the "Parties agree that the Plan has been implemented, the expected results have been achieved or there exists program accessibility to the programs, services and activities of the Metropolitan Government . . ." Since then, Metro has continued on the same path in our compliance efforts, for example, Public Works continues to follow the procedures outlined in Section VIII of the 2003 Final Transition Plan. Since 2001, Metro has had in place an ADA Compliance Division that reviews



plans and conducts field inspections for all new construction, additions, alterations, and renovations of any Metro owned or leased property, as well as handling grievances. Furthermore, the Mayor's Advisory Committee for People with Disabilities, which was established as part of the 2003 Final Transition Plan, continues to exist and meet and to provide Metro with feedback.

In particular to our right-of-way (ROW) program, Metro's Public Works Department has developed a 2017 update to its Strategic Plan for Sidewalks and Bikeways, called WalknBike. This plan was completed with input from citizens and representatives of advocacy groups. The 2002 inventory of the existing Metro public sidewalks was supplemented in 2013 with an updated inventory and condition assessment, including all of the existing 1,130 miles of sidewalks. "The purpose of this inventory was to develop a thorough sidewalk database that could be used to determine the magnitude of ADA problems for sidewalks and curb ramps. Survey teams assess the sidewalks to identify the location, condition, and characteristics of each sidewalk."

<https://www.nashville.gov/Portals/0/SiteContent/pw/docs/transportation/WalknBike/WalknBikeFinalPlan.pdf> at page 61.

The Complete and Green Streets program, addressed in Mayor Megan Barry Executive Order Number 31 (reaffirmed by Mayor David Briley Executive Orders Numbers 1 and 4), provides in pertinent part: "all Metro-owned transportation facilities in the public right-of-way including, but not limited to, streets, bridges and all other connecting pathways shall be designed, constructed, operated, and maintained to enhance environmental quality and to allow users of all ages and abilities to travel upon them safely and independently." It also incorporates by reference Access Nashville 2040, which in turn provides: "The Americans with Disabilities Act (ADA) establishes minimum standards for accessible sidewalks for people walking of all ages and abilities. Nashville's sidewalk standards should always go above and beyond these established minimums." Access Nashville 2040, Volume 5, page 72; <https://www.nashville.gov/Portals/0/SiteContent/Planning/docs/NashvilleNext/PlanVolumes/next-volume5-AccessNashville2040.pdf> This is a part of NashvilleNext, which was included in the General Plan adopted by the Metropolitan Nashville Davidson County Planning Commission, and was also approved by the Metropolitan County Council, by Resolution No. RS2015-256.

Public Works' standards for sidewalk construction incorporate by reference the ADA and the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and their standard construction drawings dictate a wider path of travel for all sidewalks than that required by the ADAAG. The Department of Public Works has spent \$192.9 million on sidewalks since 2001.

Transition Plan Review and Procedures for Continued Compliance

As part of our continuing efforts, Metro's ADA Title II Coordinator is working on a plan that will review current programs, services, and activities. This plan will also help identify deficiencies so that they may be addressed.

- All Metro departments will review their programs, services, and activities and certify to the ADA Compliance Division that they are not only accessible, but that if the nature or location of the program, service, or activity is changed in any way the department will re-evaluate to make sure the changes do not affect accessibility.

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- In addition, the Public Works Department has already classified sidewalk conditions as “good”, “fair” or “poor.” Public Works will now begin a comprehensive evaluation of all sidewalks to further identify specific issues with compliance and develop a plan and timeline to make corrections. Requests for accommodation from the disability community will be prioritized first and will be reviewed by the Public Works ADA coordinator or the ADA and Safety Services Division (ADA Compliance Division).

If you have any further questions about the issues addressed in this letter, please contact the Metropolitan Government’s ADA Title II Coordinator, Mr. Jerry Hall, at 615-862-8960.

Sincerely,

David Briley
Mayor

Copy: Jerry Hall
Nancy Whittemore
Mark Sturtevant

SECTION VIII BARRIER REMOVAL AND COMPLIANCE STRATEGIES FOR PUBLIC RIGHTS-OF-WAY

In July of 1999, each department of the Metropolitan Government of Nashville and Davidson County completed an additional evaluation of its services, programs, activities and facilities offered to the public to insure continuing accessibility in compliance with Title II of the Americans for Disabilities Act, 1990 (ADA). Because of this most recent evaluation, the Department of Public Works has revised its transition plan. Please note that this updated plan was designed to implement improvements using the Justice Department's Standards for Accessible Design, 28 CFR Part 36, App. A, (JDSAD). The management of the Department of Public Works has prepared the following:

A list of physical barriers in the public entity's facilities (improved pedestrian circulation route system) that limit the accessibility of its programs or activities to individuals with disabilities;

Many transportation activities, including walking, bicycling, transit, freight movement, and automobile travel occur within the public right-of-way. The public right-of-way harbors hardware, such as traffic signals and streetlights that supports those activities. In many cases the right-of-way also contains public utilities. Each activity occurring in the public right-of-way has specific design needs and constraints, and are administered by multiple agencies including but not limited to the Department of Public Works. In the past, conflicts between competing right-of-way activities controlled by agencies other than the Department of Public Works have produced conditions that discourage pedestrian travel. The Department of Public Works has developed a Strategic Sidewalk and Pedestrian Plan which will integrate the wide range of right-of-way design criteria and practices into a coherent set of comprehensive standards that, over time, will promote an environment conducive to pedestrian travel.

A consultant representing Metropolitan Government completed an inventory of all sidewalks located in Davidson County. Information gathered in the assessment was then incorporated into a complete sidewalk and pedestrian strategic plan for Davidson County. The inventory has identified the locations of sidewalks requiring maintenance and curb ramps that will need to be upgraded. The inventory also located the areas where there are no curb ramps.

As of January 1, 2000, the Department of Public Works began certifying that new construction of public curb ramps under the control of the Department of Public Works will be in compliance with the Americans with Disabilities Act. Additionally, improvements to existing curb ramps will comply with these standards. Curb ramp construction is to conform to Department of Public Works current standard drawings and the Justice Department's Standards for Accessible Design, 28 CFR Part 36, App. A, (JDSAD). Work that is completed, whether by Department of Public Works' personnel or outside contractors, is inspected for compliance. A record of each inspection is then maintained by the Department of Public Works. The ADA Compliance Division of the Department of Finance completes random inspections of work completed in the right-of-way. (See Exhibit D for inspection documents)

The Department of Public Works will continue to work with the County ADA Compliance Division to review internal policies to ensure the integration of ADA requirements. Updates will be written in conjunction with current and future policies of the Metropolitan Planning Commission and the Metropolitan Codes Department, and are to be enforced on Metropolitan Government construction projects. Strict measures will be taken to assure that roads or sidewalks built in conjunction with private development of new subdivisions meet the standards of these departmental policies. Every effort is being made to assure ADA compliance before the Department of Public Works accepts control over and responsibility for new subdivisions.

A description of the methods that will be used to make the public rights-of-way facilities accessible;

Curb ramps provide critical access between the sidewalk and the street for all pedestrians. Title II of the ADA requires curb ramps to be installed where existing pedestrian walkways cross a curb or other barrier so people with disabilities are not excluded from the public benefits provided by sidewalks. It is a policy requirement that curb ramps be included in new construction and alterations. It is a priority of the Department of Public Works to repair, construct and maintain curb ramps in accordance with the guidelines set forth in the ADA. In order to assure that the Department of Public Works maintains ADA compliance, the Department has completed an inventory of all sidewalks in the area maintained by the Metropolitan Government of Nashville

and Davidson County. Information included in the inventory is as follows

- A comprehensive inventory of curb ramps that includes the ramp's location
- Obstacles in the sidewalk.
- Type of obstacle in the sidewalk.

Sidewalk Design and Construction - Bid

Rehabilitation of existing curb ramps will be constructed using the design/build process. The use of this process allows the curb ramp to be designed in the field, which provides a better product for the community and the Department of Public Works. The intent of this design-build process is that curb ramps will be designed and constructed in accordance with current Public Works standard drawings and specifications for new construction to the maximum extent feasible.

A specific schedule identifying steps that will be taken each year of the transition plan period;

A construction schedule for curb ramp improvements has been adopted to assure that the Metropolitan Government's public right-of-ways will reach and maintain compliance with the latest ADA standards. This schedule includes curb ramp maintenance, repair and replacement, beginning in the calendar year 2000. Accordingly, priority will be given to any areas that have been modified, altered, or constructed from 1992 continuing to the present date.

The county has been divided into five (5) zones with the boundaries being Interstate 65 separating the east from the west, Interstate 40 separating the north from the south, and the inner loop surrounding the Central Business District (CBD) Exhibit E. Zone 1 encompasses the northwest area of the county, zone 2 the northeast area of the county, zone 3 the CBD, zone 4 the southwest area of the county, and zone 5 the southeast area of the county. Currently the area in zone 4 is scheduled for the replacement of curb ramps in December 2002. Zones will be scheduled for construction based on the following criteria:

- a. Input from other Metro Departments.
- b. Schedule with proposed Public Works projects.
- c. Schedule with Public Works paving program.
- d. Available funding.

In the past, the Department did not recognize certain milling and paving as an "alteration" as defined in the ADA; "alteration" being defined as "Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in such a manner that affects or could affect the accessibility of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992." Beginning January 1, 2000, the Department began including an inspection of curb ramps located on the streets included in the annual paving project. If it is found that new curb ramps should be installed, or maintenance is necessary on existing curb ramps, in order to maintain compliance under the ADA, funding is requested to complete the necessary work.

Sidewalk Prioritization - Bid

Accessibility of rights-of-way activities is governed by the Department of Justice's implementation of Title II of the ADA, 28 C.F.R. Part 35. It is understood that when the Metropolitan Government builds new facilities or alters existing rights-of-way, including sidewalks and streets, the Title II regulation requires that the newly constructed or altered areas be made accessible to individuals with disabilities. The Department of Public Works has prioritized the construction of sidewalks as follows:

- a. Reasonable request for accommodation and any necessary improvements to provide program access.
- b. Completion of the curb ramps constructed after 1992. (Work completed).

The Department of Public Works has funds appropriated to accomplish work for years 2002 and 2003. Additional funding for years after 2003 will have to be appropriated by the Metropolitan Government of Nashville and Davidson County.

As the Americans with Disabilities Act of 1990 was a landmark civil rights law that identifies and prohibits discrimination against people with disabilities, the Department of Public Works continues to make a commitment to reach and maintain complete compliance as mandated under the ADA with regard to accessibility. While the Department of Public Works has committed the sidewalk program to constructing curb ramps in accordance with the ADA, specific language set out in the DOJ standards has been recently interpreted and brought some clarification to the construction requirements of the ADA, such as:

New construction shall be accessible according to the standards of the ADA standards.

New construction is held to the highest standard of accessibility because the cost of providing accessible features is minimal compared to the overall cost of construction.

Alterations and new additions must meet new construction standards unless technically infeasible. In cases of technical infeasibility, compliance shall be to the maximum extent feasible.

Modifications that affect usability are considered alterations under the ADA. For example, according to the US DOJ Technical Assistance Manual, resurfacing of a roadway beyond normal maintenance is an alteration; however, construction limited in scope to a spot repair such as repainting markings or patching potholes is considered routine maintenance and does not trigger additional access retrofit requirements.

Additionally, the Department does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Because of this, the Department has designated a departmental ADA Coordinator and will investigate individual requests for accommodation that are made in regard to curb ramps; individual requests for accommodation will be reviewed as a priority and, if approved, accommodations will be completed, subject to funding appropriations for such projects.

SECTION IX CLOSING

In closing, the Americans with Disabilities Act extends to people with disabilities rights and responsibilities that are not more and not less than those already extended to other citizens. Compliance with this civil rights law is a constant and on-going process. The Metropolitan Government of Nashville and Davidson County continues to be committed to accomplishing the task of compliance with the American's with Disabilities Act through the development of model best practices. Program Access will continue to be provided through the commitment from entity leaders, continued coordination of compliance activities by the ADA Compliance Division and the Title II Coordinator and the involvement of people with disabilities