



June 21, 2010

The Honorable James J. McBride
Presiding Judge
Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

Dear Judge McBride:

I am pleased to present my response to the 2009-2010 Civil Grand Jury report, "Americans with Disabilities Act: Is San Francisco in Compliance?"

San Francisco is a national leader in disability rights and disability access. I am proud of the work the City has done to address this issue. For instance, the City's Capital Plan has consistently prioritized ADA access issues. The City commits to one of the most thorough self-evaluations of its programs and services to ensure compliance.

The City dedicates available resources each year towards ensuring our sidewalks are safe and compliant with all applicable laws. As your report notes, the volume of pedestrian walkways that require attention is significant. Your report does show that the City's Capital Plan for 2009-2018 works to address approximately 17,728 of the 35,700 remaining walkways.

The City has faced challenging economic times in recent years, and these challenges are likely to continue as we fight to emerge from the economic downturn. In spite of these challenges, the City remains committed to rehabilitating and maintaining the public right of way.

Furthermore, the City will continue to work to ensure that we monitor incursions in the public right of way. The Department of Public Works (DPW), the SFPD and the MTA all have a responsibility to enforce the laws related to accessibility. Finally, the City is committed to achieving the goals of the ADA throughout all departments so that every program remains accessible to all.

The Mayor's Office response to the Civil Grand Jury's findings is as follows:

Finding 1: San Francisco is vulnerable to litigation for non compliance with Title II mandates of the ADA.

Response: Partially Disagree. San Francisco, like other jurisdictions, may remain vulnerable to litigation if a plaintiff perceives non-compliance with Title II. San Francisco is currently involved in litigation on this issue in *Kirola v. City and County of San Francisco*. However, I disagree with the assessment that the City is non-compliant. The City has invested resources to enhance access and we

will continue to use the resources we have at our disposal to comply with Title II. San Francisco is at the forefront of addressing disability rights and disability access. The City takes proactive steps to correct existing access barriers and we work with the community to address any and all complaints we receive.

Finding 2: In response to the ADA mandates, a Grievance Procedure has been developed for intake, investigation, and referral of citizens' Title II compliance issues. Complaints that are referred to the appropriate departments have already been processed and verified as valid, and assistance to the affected departments in producing appropriate responses is available. This process significantly reduces the cost of the investigation of a complaint and the construction of a viable response by that department. The level of complaints is expected to increase by as much as three fold as the availability of the grievance process becomes better known in the community. The budget for this work was reduced for the current fiscal year (2009-2010) resulting in the lengthening of the time to complete the process and generating a backlog of cases. The sooner a complaint is processed, the less liability and risk exposure there is for the City. Delays drive up the costs of response and can encourage litigation.

Response: Partially Disagree. Budget constraints may have the potential to impact procedures to address grievances and provide referrals of citizens for Title II compliance issues. However, the City continues to process complaints effectively despite budget constraints.

Finding 3: Currently only issues involved with Title II compliance are handled by the Grievance Process. The likelihood of disabled citizens requiring an alternative for and assistance in filing concerns outside of Title II is extremely high. The only alternative for the aggrieved is litigation at great expense in both time and resources, or filing a complaint with the DOJ. It is estimated to cost about \$750,000 to expand the Grievance Procedure to cover private sector complaints.

Response: Partially Disagree. I do agree the City receives citizen complaints that fall outside the scope of Title II. However, the City does provide other avenues for citizens that may potentially help them avoid litigation. For instance, the Department of Building Inspection, the SFPD, and the Human Rights Commission assist in addressing grievances for physical access violations, service animal complaints, and other violations in public accommodations. Please see the Mayor's Office on Disability (MOD) response.

Finding 4: The Facilities Transition Plan (FTP) is comprehensive and is updated periodically. Over two thirds of the plan has been accomplished, with work on the final portion underway. The capital plan for the City allows for the continued work, especially regarding curb cuts and sidewalk issues, but extends the costs over the next twenty to twenty five years. Current cost estimates total over \$500,000,000 with more than half of the sum originating from public sources. These sources are varied, and come from Federal, State, and local coffers via myriads of programs, many with specific use criteria. Even with all known sources, the expenditures far exceed available funds. Of critical importance is the need to maintain consistent levels of funding, without which experienced staff will be lost with detrimental impact on their programs.

Response: Partially Disagree. The finding is correct in that the City has made significant strides in our Facilities Transition Plan. The City has made significant accessibility improvements in our buildings and facilities, which has resulted in full program access to all city programs. Where I disagree with this finding is the cost estimates for work on curb cuts and sidewalks. According to the MOD, actual work

on areas the City has identified for rehabilitation will cost an estimated \$120 million to \$150 million, rather than the \$500 million mentioned in the Civil Grand Jury finding. Please see the Mayor's Office on Disability response.

Finding 5: The City incurs significant risk and liability from the insufficient monitoring of incursions to the public right of way and the maintenance of a clear-path-of-travel. The DPW is responsible for the investigation and enforcement of temporary and permanent sidewalk incursions involving the entire City. The majority of infractions are due to temporary barriers incorrectly erected. Over 1000 complaints are on file at any given time, and more than 400 new complaints are received weekly. The team of inspectors has been unable to keep pace with and process these complaints. Delays in the correction of incursions can lead to lawsuits.

Response: Partially Disagree. While I agree that potential delay in DPW's response to complaints raises concerns of risk and liability, I believe the City is doing an effective job with the resources available to monitor incursions in the public right of way.

Finding 6: The SFPD and MTA (MUNI) (DPT) have large numbers of employees whose work involves a great deal of public contact. Assistance and sensitivity training for the service to and interaction with disabled persons in a manner that is effective and respectful of their rights, has yet to be fully developed. A successful completion certificate would result in a higher degree of subject retention and grant a sense of accomplishment when awarded. The MOD is working with these departments in order to do so, but lacks the financial wherewithal needed for its accomplishment. Many viable models exist which can be adapted to fit training goals, reducing development and implantation costs.

Response: Partially Disagree. I agree that the nature of work at SFPD and MTA require specialized training because of interactions with the public. To this end, the Mayor's Office on Disability (MOD) is working with the departments on updating its programs for not only top managers but also point of service staff. I disagree that the SFPD and MTA programs are not fully developed. MTA, for instance, has disability awareness training programs that provide training to new operators, reviews of the ADA, and the MTA involves persons with disabilities as community experts who assist in these trainings.

The Mayor's Office response to the Civil Grand Jury's recommendations is as follows:

Recommendation 1: The City Attorney's Office should assess the liability and risk to the City for the incomplete level of Title II compliance, and report its findings to the Mayor and BOS by October 31, 2010.

Response:

Recommendation Requires Further Analysis. I agree that the City should assess its liability and risk for its level of compliance to Title II of the Americans with Disability Act. However, I do not believe the City Attorney's Office can evaluate this risk by October 31, 2010 until there is resolution in the *Kirola v. City and County of San Francisco* case. Please see the City Attorney's Office response.

Recommendation 2: San Francisco should expand the Grievance Procedure to the level necessary for the "prompt and equitable" resolution of ADA complaints.

Response:

Recommendation Requires Further Analysis. Although recent budget cuts have impacted staffing, the Mayor's Office on Disability (MOD) does ensure that ADA grievances received are handled effectively. As with any impacts to staffing, there is a possibility of a change in response time for complaints as existing staff take on additional responsibilities. I am confident that MOD staff is more than capable of meeting this challenge. When the budget situation improves, I believe we can then address any expansion of the grievance procedure and review any need for increased staffing levels.

Recommendation 3: By January 2011, the MOD in association with City departments' ADA Coordinators should initiate a study to determine the feasibility of the expansion of the grievance procedure to incorporate private sector ADA compliance issues as an alternative to litigation.

Response:

Disagree; Will Not be Implemented. Although it is important to address private sector ADA compliance issues as an alternative to litigation, the Human Rights Commission is tasked with addressing civil rights complaints, including disability rights complaints, in the private sector. Please see the Mayor's Office on Disability response.

Recommendation 4: San Francisco should obtain and distribute the needed funding through all available and creative means including targeted bond issues to accelerate the achievement of compliance goals in ten years. Consistent funding levels must be maintained in order to retain, develop, and expand the pool of valuable experienced personnel.

Response:

Agree; Already Implemented. Each year, the City provides funds in the Capital Plan for improvement projects for the public right of way. The City uses its General Fund dollars, sales tax revenues, and debt financing to these projects. Furthermore, the City uses state and federal dollars to fund these projects. I would like the Civil Grand Jury to note that the City has attempted several times to issue bonds in order to address ADA compliance, but the voters have rejected these efforts each time. With adequate resources as they become available, the City can achieve total compliance. I remain committed to prioritizing ADA access issues and the City will continue to explore all feasible alternative funding sources to ensure the continuation of this goal. Please see Mayor's Office on Disability's response and the Department of Public Works' response.

Recommendation 5: The City should pursue full enforcement and monitoring of incursions to the public rights of way, especially with regards to temporary sidewalk incursions. Staffing levels must be maintained to address and complete inspections and investigations promptly and to eliminate backlogged cases.

Response:

Recommendation Requires Further Analysis. The City vigorously pursues enforcement and monitoring of the public right of way. However, staffing levels are dictated by many factors and given the current economic climate, it would not be feasible to maintain staffing levels if inappropriate under the financial circumstance, in light of DPW's multiple obligations to the public. Despite diminishing resources, DPW has in place its Sidewalk Inspection and Repair Program (SIRP) that allows the department to proactively inspect and repair city sidewalks. This program is running well and has resulted in 40% to 45% fewer complaints.

Recommendation 6: By June 2011, the City should develop training programs in areas of assistance and sensitivity to the needs of disabled persons, especially at MTA and SFPD. These programs should be implemented by December 31, 2011.

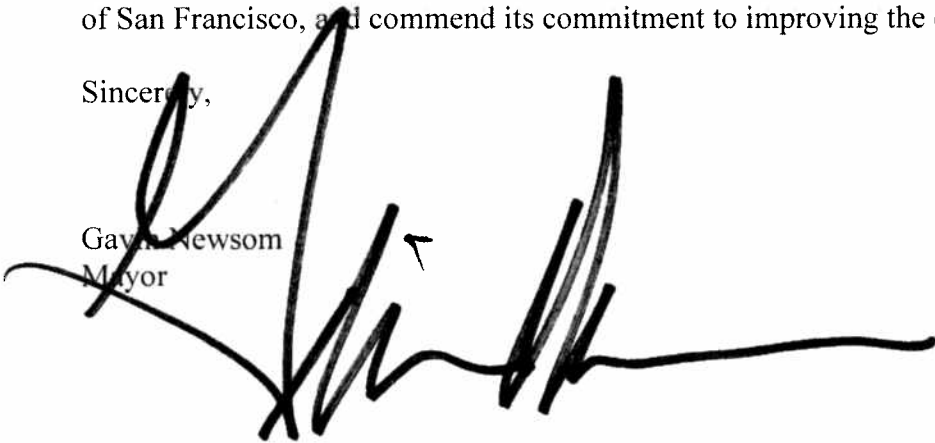
Response:

Agree; Already Implemented. The MTA and SFPD have programs in place that address this issue. For instance, the SFPD trains new recruits with ADA-related training and the department's Police Crisis Intervention Program is designed to provide training that enables law enforcement to handle more effectively situations involving mental illness and disability. Furthermore, both the MTA and SFPD dedicate staff to handle ADA compliance and provide trainings. The departments will continue to work with MOD to enhance training programs. One point raised by both the SFPD and MOD, however, concerns the Civil Grand Jury's proposed implementation date. Though all departments will work to further training programs, the progress of such work will depend on the availability of resources. With respect to the goal to create on-line training programs, the City is eager to move towards this training model. However, as MOD indicates in its response, this effort will not be completed by December 2011.

In conclusion, I offer my thanks to the 2009-2010 Civil Grand Jury for its service to the City and County of San Francisco, and commend its commitment to improving the effectiveness of city government.

Sincerely,

Gavin Newsom
Mayor

A large, stylized handwritten signature in black ink, written over the typed name 'Gavin Newsom Mayor'. The signature is fluid and cursive, with a long horizontal stroke at the end.