



AGENDA

REGULAR MEETING OF
THE MAYOR'S COMMITTEE
ON DISABILITY
MAY 19, 2022
10:00 AM
ATTEND VIRTUALLY

PROCEDURES FOR THE MAYOR'S COMMITTEE ON DISABILITY MEETING

Attendance: the Mayor's Committee on Disability meeting will be conducted virtually.

Internet: To join the Zoom meeting on the internet using a computer, laptop, smartphone, or tablet, use the following link: <https://santafenm-gov.zoom.us/j/96829851244?pwd=ZUZOCnBRU1pOMVh4YmR0c0c3VIRpQT09>.

Passcode: 835049

Attendees should use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

Phone: To join the Zoom meeting using a phone, use the following phone numbers and Webinar ID: **US: 1 (346) 248-7799 - Webinar ID: 968 2985 1244 - Passcode: 835049**

Phone attendees should press *9 to use the "Raise Hand" function to be recognized by the Chair to speak at the appropriate time.

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF MINUTES**
 - a. April 21, 2022 Meeting Minutes
5. **PUBLIC COMMENTS (15 MINUTES TOTAL)**
 - a. Public Comments from Website
 - b. Letter to the Editor – Warning: Trapped in city parking garage



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6. **PRESENTATIONS**

- a. Accessible Emergency Sheltering (Eli Fresquez)

7. **ACTION ITEMS: DISCUSSION**

- a. Finalizing of MCD Priorities for 2022 - 2023 (Kathlyne Gish)
- b. Discussion Regarding In-Person Meetings Notice from City of Santa Fe (Kathlyne Gish)
- c. Discussion Regarding Notice for MCD Committee Membership (Kathlyne Gish)
- d. Updates re Letter on Accommodations for a Stenographer/CART (Eli Fresquez)

8. **OLD BUSINESS**

- A. MCD Sub-Committee Reports

9. **MATTERS FROM STAFF**

- a. A link to the video recording of this meeting will be added to the Meeting Minutes for this meeting
- b. ADA Coordinator resignation and search for new ADA Coordinator

10. **MATTERS FROM THE COMMITTEE**

11. **NEXT MEETING: Thursday, June 16, 2022**

12. **ADJOURN**

This venue is equipped with closed captions. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.



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1. **CALL TO ORDER**

10:04 AM

2. **ROLL CALL**

Members Present:

Member Aureore Bleck
Member Kendra Garcia
Member Kathlyne Gish
Member Pam Parfitt
Member Angelique Montoya-Chavez
Member Meriam Jawhar
Member Jose "Eli" Fresquez

Members Excused:

Member Hope Reed
Member Victor Hughes

Others Attending:

Tom Graham, ADA Coordinator
Alan Webber, Attendee

3. **APPROVAL OF AGENDA**

Chair Gish requested to move Member Fresquez's discussion item 8 (B) up on the agenda to item 7 (B) and all subsequent items to be listed appropriately.

MOTION: Member Bleck moved, seconded by Member Garcia, to approve the agenda as amended.

VOTE: The motion was approved on the following Roll Call vote:

For: Member Bleck, Member Garcia, Member Gish, Member Parfitt, Member Montoya-Chavez, Member Jawhar, Member Fresquez

Against: None



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Abstain: None

4. APPROVAL OF MINUTES

- a. February 17, 2022 Meeting Minutes

Member Bleck pointed out two typographical errors that have been fixed.

MOTION: Member Parfitt moved, seconded by Member Jawhar, to approve the 2/17/2022 Minutes as amended.

VOTE: The motion was approved on the following Roll Call vote:

For: Member Bleck, Member Garcia, Member Gish, Member Parfitt, Member Montoya-Chavez, Member Jawhar, Member Fresquez

Against: None

Abstain: None

5. PUBLIC COMMENTS (15 MINUTES TOTAL)

- a. Public Comments from Website

There are no members of the public present in the Attendee Room and no public comments were posted to the website.

6. PRESENTATIONS

- a. None

7. ACTION ITEMS: DISCUSSION

- a. Proposing a Brain Injury Subcommittee (Meriam Jawhar)

Member Jawhar presented the community need in Santa Fe for a Brain Injury Subcommittee to address the struggles of brain injury that are prevalent in all demographics within the City. She has developed coping skills that she would like



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to pass on and help others experiencing similar struggles to be able to function and live to their highest potential as she has learned to do. Everybody and every brain injury is different and people may be experiencing difficult things that this committee could be helpful with. She's still formulating the picture and idea of how the subcommittee would be functional to help identify and support these individuals and how this can work with the Mayor's Committee on Disability to assist specifically for people with brain injuries. She then proposed to the MCD for the establishment of this Subcommittee with her as the Chair of the subcommittee.

Member Bleck said that she supported the idea to add it to the list of subcommittees and identify brain injury as another category and service that people can reach out and have a place to go, or know where to go for assistance.

Member Fresquez also supported the idea and mentioned the NM State BIAC (Brain Injury Advisor Council) and the resources they have available. He suggested developing a list of resources specific to local brain injury dedicated to this part of the state.

Member Jawhar appreciated Member Fresquez's comment and identified that she was a Governor appointed member of BIAC for eight years and is familiar with their successes and resources. She knows there are many different resources located in many different locations and that for her to develop a consolidated list of resources fine tuned specific to Santa Fe would be a very useful.

Vice Chair Garcia also supported the formation of a local list, but because some of the State's major resources are in some of the larger cities within New Mexico, she suggested including them on the list of resources, so as to not deny anyone of the possible assistance that may be available to them. She also mentioned that perhaps the MCD could support some type of campaign to help get the word out that this information is available.

Chair Gish also expressed her support for the formation of a Brain Injury Subcommittee.



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MOTION: Member Bleck moved, seconded by Member Garcia, to approve and support the formation of a Brain Injury Subcommittee with Member Jawhar acting as Chair as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Member Bleck, Member Garcia, Member Gish, Member Parfitt, Member Montoya-Chavez, Member Jawhar, Member Fresquez

Against: None

Abstain: None

b. Updates regarding Letter of Accommodation for a Stenographer (Eli Fresquez)

Member Fresquez drafted a letter based on the previous communication letter for the AFN Kits requesting what is needed for these meetings and more importantly, for members of the public. His draft letter is requesting CART captioning which is transcription live captioning by a human and this can be done with Zoom or other internet platforms, but can also be done live on a screen, in person depending how we set it up. What we use now for the Zoom meetings is transcription captioning through speech recognition which is sometimes, somewhat accurate, but often not. For clarity, Member Fresquez has suggested using a transcription service with CART captioning and this does cost money, but is required under the ADA if it's requested.

Mr. Graham provided possible considerations to think about while finalizing the letter, about how the City currently has undertaken the expense of the voice recognition closed captioning software and a loop system in the City Council Chambers (that may or may not need to be repaired or updated to current standards for functionality) and that this is to be provided on an as requested basis by people with these disabilities. The current pulse of the City personnel providing these services is that they are providing the required services, but it is the MCD's place to educate them how this is not the case and instead of demanding something, possible rephrasing it to educate them and allow them to make the right decision to make it better for everyone.



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Member Parfitt stated that she finds voice recognition captioning, useless. Because she is a lip reader, she's trying to get all the facial cues that she can to understand and when she has to read something that is several sentences behind and inaccurate, it doesn't match with what she's seeing and is not helpful. She knows that CART transcription services are way superior and she doesn't know what the cost is, but the instantaneous response is great. Member Parfitt is also a member of the HLAA and their efforts are focused on providing functional loop systems in all public venues with PA systems that can be used with people's hearing aids, so she would like to see CART transcription for online meetings, but would like to continue to push for the loop systems for in-person meetings. The current state of development for the voice recognition software that we are using is useless for her.

Member Fresquez said that in reference to the cost of the services, if the City already has a person in their employment that is trained to provide these services, then the cost would be nil and the MCD would just need to request to have them present at these Zoom meetings to provide the services. Member Fresquez said that the cost for CART services is primarily for the person doing the transcription and if the City already has somebody trained for this, that would offset the cost, but he said if not, the cost is about \$100 an hour, give or take.

Member Parfitt was confused about the difference between a CART Stenographer and the Stenographer the MCD had prior to the pandemic, because that stenographer's notes were not word for word and a complete transcription of the meeting.

Member Fresquez stated that the terminology is a little interchangeable, but a stenographer who is trained in word for word transcription, would be able to provide CART services. So if the City has a trained stenographer, we could utilize them in Zoom meetings for CART transcription services.

Mr. Graham said he wasn't sure if the City has somebody trained for those services, or if they would be contracted.

Chair Gish said that she didn't know either, but she does know that Liz (Martin) the previous stenographer was the most accurate and comprehensive stenographer the MCD ever had and she was also very helpful in understanding the Open Meetings Act and processes necessary for the MCD to conduct business.



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Member Bleck and Chair Gish agreed that the language can emphasize that it is more accessible to more people, more clear to a population that needs more clarity and access.

Member Fresquez made one last point, that there is something under the ADA called “primary consideration” and that is when a particular request is made for a type of service. Under the ADA, the State and Local government is required to give the requested service “primary consideration” above any other alternatives unless the State and Local government can show that their proposed alternative is equally effective in accommodating and as accessible as the primary consideration. So this is contemplated under the ADA and there is a process in order to determine what is suitable based on the person and the group that is requesting the primary consideration for effective communication.

Member Parfitt added that for the hearing impaired and deaf/blind people, CART services and a hearing loop together is covering all the bases. When she sees something written in real time, it clarifies what she’s missed even with a loop or lip read. She does not want to diminish the importance of hearing loops or CART services and if there is way to provide both of them a lot of people could understand.

Chair Gish emphasized that the point of this committee is to reach as many people as possible and not everyone has access to various equipment and has the money for hearing aids even. So the MCD really needs to be as accessible as it can be to reach as many people and provide as many forms of accessibility needs as possible, especially for the MCD who needs to reach their constituents and being able to communicate to the population that we are representing within the city. She is concerned that without essential forms of communication both to the population and receive communication from them, something really important could be missed.

Member Bleck said that the letter it could be said that the CART services would replace the voice recognition software used with virtual meetings, but not replace the need for a functional hearing loop. So that it is understood that they are represented as a need both together.

Vice Chair Garcia brought up the comments in the chat, and Chair Gish read the comments: Member Fresquez wrote that CART also supports people with cognitive



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disabilities and English as a second language. Member Montoya-Chavez wrote I think it's important for everyone to be provided with the least restrictive environment.

- c. Continuation reviewing 2019-2020 MCD Priorities and finalizing updates of priorities for 2022-2023 (Kathlyne Gish)

Chair Gish shared the draft list on the screen and stressed the importance to make the list public information so that constituents know what the MCD is doing and how to contact the members regarding the items relevant to their concern, then she asked for any additions, revisions or corrections.

Member Bleck pointed out a typographical error under the Core Advisory Group, that Member Fresquez agreed to and was changed on the spot.

Member Fresquez also informed the committee that a meeting cadence had been established with Brian Williams, the City's Emergency Manager, along with himself and a number of community members and people who work with the State, and will continue to meet every third Tuesday of the month. This will occur right before the MCD meeting and will be able to provide a timely update to the MCD. The first meeting will occur next month in May.

Member Bleck mentioned that all the PTSD references to actions/research should be eliminated since Member Hughes resigned from the committee. Chair Gish stated that the main body of the PTSD awareness information will still be included, because it is important, but she and the current members do not have enough time to do the research at this time.

Member Bleck didn't understand the item regarding hearing loss and the Public Right of Way (PROW). Chair Gish asked Member Parfitt to explain and Member Parfitt stated that while Hearing loss accessibility and loops in particular are important to new construction and retrofitting public meeting spaces for the transition plan, it was not intended to be included for the PROW. Chair Gish removed the reference.



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Member Bleck suggested a modification to the second paragraph of the cover letter that Chair Gish agreed to and will modify appropriately.

Member Bleck then identified, under the transportation subcommittee, that two bullet points could be combined into one and Chair Gish made that change in real time.

Member Bleck brought up an idea concerning the Santa fe Ride vouchers that were distributed (pre-pandemic) for people with disabilities could also be funded by pandemic money and distributed by different agencies for youth and low income people.

Vice Chair Garcia mentioned that many times the vouchers are distributed by different organizations, especially for youth and low income people, but the organizations don't have funding for these type of services and tend to ask the City of Santa Fe to donate them for this purpose. This can be a difficult process, but if something was in place related to income and rules, then it would be better than depending on the City to periodically donate items such as the vouchers for use.

Member Bleck then identified another typographical error that Chair Gish corrected.

Member Parfitt mentioned that under the Health and Safety category, the bullet about the noise ordinance should add a third bullet concerning the dBA level at concerts/enforcement at public venues. Chair Gish made the addition.

Member Fresquez asked a question about the purpose of this list concerning whether it is for the City to complete, or more for the Committee to help facilitate with the City efforts to complete these priorities? Chair Gish explained that this is the MCD's way of identifying things the MCD is concerned with, interested in and needed. It gives them an idea to plan for.

Member Fresquez asked if there was anything on this list for small businesses education and training? He offered to Chair such a subcommittee. He mentioned the news story recently and the law firms that go around filing suits on small businesses and really doing a disservice to the disability and small business community alike. Education and training would be very beneficial to small businesses in the Santa Fe community.



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Being a small business owner, Member Parfitt is very interested in the MCD providing this type of service. These lawsuits are horrible for small businesses, but education could save them these very costly expenses.

Vice Chair Garcia also supported the formation of a subcommittee to provide awareness to small businesses.

After the MCD unanimously voted for the new subcommittee, Member Fresquez agreed to send the description to Chair Gish to add to the priorities list.

Mayor Webber stated that he was eager to receive the MCD list of priorities to see how the City can support the MCD.

MOTION: Member Garcia moved, seconded by Member Bleck, to approve the Formation of a Small Business Education Outreach Subcommittee with Member Fresquez as Chair as presented.

VOTE: The motion was approved on the following Roll Call vote:

For: Member Bleck, Member Garcia, Member Gish, Member Parfitt, Member Montoya-Chavez, Member Jawhar, Member Fresquez

Against: None

Abstain: None

- d. Approval of Letter to Mayor, et al. regarding updates to priorities by category (Kathlyne Gish)

Chair Gish agreed to modify the letter with the appropriate verbiage Member Bleck suggested to replace the second paragraph with and then requested a vote as amended.

MOTION: Member Parfitt moved, seconded by Member Bleck, to approve the Priorities Letter to the Mayor as amended.



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VOTE: The motion was approved on the following Roll Call vote:

For: Member Bleck, Member Garcia, Member Gish, Member Parfitt, Member Montoya-Chavez, Member Jawhar, Member Fresquez

Against: None

Abstain: None

- e. Mayor's Committee on Disability (MCD) updates and actions discussion (Kathlyne Gish)

Chair Gish voiced her support in full for the members of the committee to progress at their own pace as required by the crazy circumstances the world is experiencing currently and for the past two years. She understands the stress brought on by these circumstances and doesn't want to add to that stress by the actions of this committee. Compassion and humanity needs to be the predominant response to everyone. She used this item as a check in with each other and wants the MCD to be supportive and not a problem. Chair Gish is grateful for their attendance and involvement. The MCD is moving forward and it doesn't matter about the pace.

Vice Chair Garcia appreciated the comments from Chair Gish and agrees with the sentiment.

Member Fresquez wrote in chat about the great job Chair Gish is doing.

Member Jawhar thanked Chair Gish for the sentiment and her availability to the individual committee members and is happy to be there for Chair Gish as well if needed. Together we make a whole, for sure.

Chair Gish expressed that the current MCD is an incredible committee and includes some of the best personnel she has been a part of since her participation with the committee back to 2013. She extended her gratitude for the efforts of the committee members and appreciates them all. She commented about the wonderful job they are all doing and the achievements they are making.



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8. OLD BUSINESS

- A. Update on Noise Ordinance issues that require enforcement of current requirements (Pam Parfitt)

Member Parfitt said that she is holding off on the Letter, because of the continuous shifting of guidelines and positions of those advocates pushing for change to the enforcement ordinance.

Member Parfitt has met with Director Ochoa and Chief Joye to discuss her concerns and a follow up meeting has been scheduled in May.

Member Parfitt also advised the MCD of Councilor Lindell's efforts of working toward revisions to the Noise Ordinance.

The World Health Organization (WHO) has released new updated guidelines that requires changes be made to Member Parfitt's original requests regarding levels and damage to hearing. These guidelines will require further revisions to her requests for enforcement language.

Member Parfitt discussed her concerns and provided background information for the Mayor's benefit in bringing her update to his attention. She reiterated that the letter was a work in progress based on the efforts of many, for the protection of many.

Member Bleck agreed that the inclusion of language in city contracts with vendors/bands would be important.

Member Parfitt believes that education is paramount to people's health.

Chair Gish believes that a letter of support from the MCD would benefit the efforts toward this cause and offered her assistance to Member Parfitt to issue a general letter of support by the MCD.



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B. MCD Subcommittee Reports

None

9. **MATTERS FROM STAFF**

- a. A link to the video recording of this meeting will be added to the Meeting Minutes for this meeting

https://santafenm-gov.zoom.us/rec/share/DTegklipg-CkPgRvbsZgvd6BtHQPphtFz957sPkXIVaVnWgYa4KHOR3Uaqb1pAl6.xVdKjr_jckJMXAz9?startTime=1650556919000

Passcode: W?Zgw2V\$

Mr. Graham identified that the efforts are underway to advertise the MCD position available as a result of Member Hughes' resignation.

Mayor Webber was glad that he could drop in and mentioned that it is in his benefit to listen in and looks forward to the future communications from the MCD. He liked the tone and temper of the Chair's message of compassion and understanding and how relevant it was to the current circumstances going on in the world. People are very stressed out by two years of Covid. He said that having a group of people looking out for each other and working for the inclusivity of the entire community is very important and refreshing.

Mayor Webber thanked all the members for their good service and hard work. He told them to stay healthy and continue to send letters, Emails, suggestions and advice. He then emphasized the importance of the the time that Covid has brought on us all. People see the world with very fresh eyes and recognition that, one way or another, everybody's dealing with some kind of a disability, legally recognized or not and the work of the MCD is very important and beneficial to the entire community.

10. **MATTERS FROM THE COMMITTEE**

- a. Updates to ADA Website requirements for Title II

Chair Gish brought attention to the announcement included in the packet for the meeting regarding the Department of Justice's newly released website accessibility



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guidelines that would provide support of the MCD's efforts to have the City's webpage made accessible for all constituents, regardless of their disability.

11. **NEXT MEETING: May 19 2022**
12. **ADJOURN**

This venue is equipped with closed captions. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

Adjourned at 12:10 PM

Liaison

Chair

https://www.santafenewmexican.com/opinion/letters_to_editor/warning-trapped-in-city-parking-garage/article_c15d9550-ba84-11ec-8773-6feb40500221.html

LETTERS TO THE EDITOR

Warning: Trapped in city parking garage

Apr 13, 2022

A heads-up to the disabled community (of which I am one) that Santa Fe's Sandoval parking garage is not reliable in honoring fee-free parking to holders of handicapped parking placards. The city Parking Division says that upon departing the garage, placard-holders need only to press the call button at the exit gate to speak with someone who will request the placard number and will open the gate remotely. While trying to depart the garage after attending a sold-out performance at the Lensic, I found the call button did not work, and I ended up stuck between the closed exit gate and the crowd waiting to exit behind me. I could not open my car door since I was close-in beside the ticket-taking machine.

I had no choice but to sit there while the bewildered folks behind me wondered what was going on, since the Parking Division no longer provides attendants. Finally, one driver approached me on foot and agreed to guide the several exasperated drivers behind me to move so I could back up and get out of the way. This was humiliating and extremely stressful. To its credit, the Parking Division did return my follow-up call the next day, apologized and said the system has had ongoing problems. No kidding!

Greg Kroll

Santa Fe

The checks will help

To Brett Kokinades on Gov. Michelle Lujan Grisham — (“Solutions, not checks,” Letters to the Editor,

Priorities by Category:

Health and Safety

- Purchase and implementation of AFN kits.
- Emergency Preparedness
 - Including new alternative responses, and awareness of how they work w/ PWD.
- Increase safe relationships with authorities for community members with disability needs, awareness of how to work w/ PWD).
- Disability access, functional needs, emergency preparedness, collaboration w city of SF emergency mgmt., first responders.
- Increase use of systems (phone apps, city vehicle posters, etc.) to aid in awareness/ communication of emergency notifications and evacuation procedures.
- Effective emergency communication.
- Access Mass Care – City of Santa Fe emergency shelter, family assistance centers, etc.
- Emergency transportation
- Whole community planning
- Disability integrated recovery, mitigation.
- Enforcement of maintenance of city streets, sidewalks, crosswalks, parking lots, pathways, and bike trails in accordance with ADA regulations (ice, snow removal, debris, brush, and weed removal, and development and maintenance to reduce liabilities and increase access for safety and emergency evacuation).
- A focus will be centered on gathering data to show the need for enforcement of the current noise ordinance with an eye on an update in the future. And educating residents about how loud/sustained noise can cause hearing loss and what the safe and unsafe limits are.
 - Enforcement of noise ordinance, includes:
 - Traffic calming
 - Mufflers required and enforcement
 - DBA level at concerts/enforcement In public venues/events
- Awareness of Post-Traumatic Stress (PTS) as it is impacted by noise ordinance issues and PTS symptoms/sensory awareness – noise can be very harmful for behavioral health.
- Building community awareness of the PTS Spectrum— to facilitate a more civil, inclusive, and productive discourse around PTS issues. PTS is not considered a disorder in current parlance, and it's counterproductive to refer to it that way. PTS is a condition that exists on a spectrum. On one end of the spectrum exists a state of being that afflicts us all, by virtue of our births— PTS. On the other end of the spectrum exists a disabling state of being that afflicts some, by virtue of the

intensity, frequency, and/or duration of exposure to trauma inducing events— disabling PTS. In between these two ends of the spectrum exists another state of being, where functionality may be impaired or limited, and aspects of personal and professional life may be adversely affected— problematic PTS.

- Susceptibility to problematic and disabling PTS: Certain populations in our community are more susceptible to problematic and disabling PTS by virtue of their circumstances. Populations highly susceptible to problematic and disabling PTS include but are not limited to food insecure; homeless; immigrant; incarcerated; LGBTQ+; minority; physically, sexually, and/or psychologically abused; substance abuse; unemployed; and veterans. The subcommittee will increase community awareness to better understand problematic and disabling PTS in these and other highly susceptible populations to the City of Santa Fe.
- Services available to those with problematic and disabling PTS: There are a multitude of local services available to those with problematic or disabling PTS; the Subcommittee will bring awareness of gaps in current services and the need for other effective treatment solutions not currently offered that would be of benefit to our community in order to reduce negative individual, social and economic consequences of problematic and disabling PTS in Santa Fe.
- Emergency evacuation plan for paratransit/bus users and seniors.
- Private vehicle ‘Emergency Notification System’ for people with disabilities, non-verbal people, seniors, and others with health and safety needs.

Parks and Recreation

- Revision and enforcement of the ordinance governing noise levels during outside events in the Plaza and public parks
- *(Pending – In Progress)* Fort Marcy Park: Bus stop has no map or guidance for bus riders to access park safely/indicate distance, pathways, etc.
- *(Pending – In Progress)* Accessible/inclusive parks in Santa Fe.
 - Update play areas in city parks to allow wheelchair access (phase out and replace wood chips and add inclusive play equipment).
- *(Pending – In Progress)* Fix pedestrian bridge and pathways in Fort Marcy Park to make them accessible to wheelchairs and scooters; install temporary signage with directions to accessible route until repairs done.

Transportation

- 24/7 public transportation: This is needed for safety and medical reasons. Poor people and abuse victims are most vulnerable to transportation challenges. A poor person with a sick child might delay medical care because there is no transportation. City of Santa Fe activities and SFCC classes end at 10:00pm, but Transit has ended operations.
- Increase transportation access to residents who lack private transportation access.

- Bus accessibility: older residents and those who can't stand long have difficulty using bus stops without benches. Add benches where possible to bus stops that serve the elderly and disabled people, such as outside of medical service providers, stores/shopping areas, residential areas.
- Transportation cost assistance for paratransit users: Economical bus passes are available to all Santa Feans, but for persons who must use paratransit for all transportation, there are no programs that would help income-qualified people with these expenses.
- Free transportation for youth/low-income adults who use paratransit.
- Explore possible permanent dashboard display of disability parking placard for those with memory issues.

Transition Plan

- Getting HH/Deaf to be specifically included in the Transition Plan
- Need interior plans for southside bus depot
- Maintenance of City parking lots, streets, sidewalks, crosswalks, pathways, and bike trails in accordance with ADA regulations.
- Review of city construction and remodeling projects by plan Review Subcommittee for adherence to ADA guidelines.
- Ongoing sidewalk improvements, barrier removal, and repairs, and update of PROW list as projects are completed (20-year time frame unless more funding obtained):
 - Obstructed, narrow, sidewalks – light poles, fire hydrants, etc.)
 - East Palace Avenue - steep curb cut with parking meter obstructing.
 - East Palace/Washington Ave – Ice builds up in crosswalk if snow is not cleared
 - Canyon Road (and many others) light poles obstructing.
 - Sidewalks lacking, lacking curb cuts, etc. in all four districts (including below):
 - *(Pending – In Progress)* Ventana de Vida along Pacheco to St. Michael's
 - *(Pending – In Progress)* Henry Lynch between Agua Fria and Rufina

NOTE: Sidewalk repair: The stretch of Pacheco between the Ventana de Vida senior center and St. Michael's Drive has no existing sidewalk, thus impeding access to the local shopping. This is a high priority and expected to be addressed next after some work on Agua Fria, but the city has a huge, prioritized list of sidewalk repairs that could benefit from a share of a gas tax or other funding mechanism.
- *(Pending – In Progress)* Review the Transition Plan to identify the outstanding upgrades needed to PROWs.
- *(Pending – In Progress)* Cerrillos Road bus transfer station access – light pole in the way of sidewalk that inhibits accessible wheelchair route between Santa Fe Place Mall and the Southside bus station.
- *(Pending – In Progress)* Bus stop in front of Indian Hospital – update for accessibility and curb cuts.

Effective Communication

- Update online systems to maintain and expand inclusive and accessible hybrid/online Committee, Board, City Council (etc.) meetings.
- Hearing Loops: Availability of hearing loops in all locations where the City Council meets and a new city ordinance that requires loop installation in new construction and remodels of public venues.
- Update/modernize City Website to be ADA accessible/compliant, and assure accurate, up to date, and clearly written/organized information.
- MCD Webpages
 - Update language and organizing to be clearer and more useable
 - Add Accomplishments page
 - Add Subcommittee page
 - Accessibility Statement
- Make community resources clearer
- Awareness campaigns
 - Radio, newspapers, website, online outreach, Alert Santa Fe, informational flyers, community engagement, train/outreach to other committees (Quality of Life, City Council, etc.) etc.
 - Educational campaign to encourage installation of adult changing tables in public and commercial facilities. Ask Chamber of Commerce and City to recognize these efforts and produce a map/app of available facilities

Housing

- Income source anti-discrimination laws: Promote updated city ordinance that requires landlords to accept legitimate income sources from potential tenants (but the landlord would still retain discretion with credit, etc.). Landlords currently do not have to accept all legitimate types of income to evaluate potential tenants. This is particularly a problem for people who are disabled, veterans, and seniors. Other cities have fixed this with an ordinance.
- Housing affordability: The housing shortage adversely affects all Santa Feans.
- Housing accessibility: It's easier to incorporate accessibility features into new construction. Ensuring that new multi-unit housing has accessibility features, and a certain number of wheelchair friendly units would help. Funds are currently available to help retrofit older housing so that people can adapt to health changes and/or age in place.
- Homelessness: Persons with physical and mental health needs are disproportionately represented in the homeless population. Housing First can help put these constituents on the road to getting better health care and an enormously improved quality of life.
- Transitional housing for people coming out of jail/institutions.

- Explain process and benefits of accepting housing vouchers on the City website, and include PSA by Ms. Kyra Ochoa who had housing-voucher tenants and had a good experience (other cities have examples we can examine).

Other

- Dave McQuarie Memorial Plaque in Santa Fe

Priorities by Subcommittee:

Core Advisory Group (CAG) (Eli)

- Purchase and implementation of AFN kits.
- Emergency Preparedness
 - Including new alternative responses, and awareness of how they work w/ PWD.
- Increase safe relationships with authorities for community members with disability needs, awareness of how to work w/ PWD).
- Disability access, functional needs, emergency preparedness, collaboration w city of SF emergency mgmt., first responders.
- Increase use of systems (phone apps, city vehicle posters, etc.) to aid in awareness/ communication of emergency notifications and evacuation procedures.
- Effective emergency communication.
- Access Mass Care – City of Santa Fe emergency shelter, family assistance centers, etc.
- Emergency transportation
- Whole community planning
- Disability integrated recovery, mitigation
- Enforcement of maintenance of city streets, sidewalks, crosswalks, parking lots, pathways, and bike trails in accordance with ADA regulations (ice, snow removal, debris, brush, and weed removal, and development and maintenance to reduce liabilities and increase access for safety and emergency evacuation).

Hearing Education and Accessibility Subcommittee (Pam)

- A focus will be centered on gathering data to show the need for enforcement of the current noise ordinance with an eye on an update in the future. And educating residents about how loud/sustained noise can cause hearing loss and what the safe and unsafe limits are, is our focus.
- Getting HH/Deaf to be specifically included in the Transition Plan
- Hearing Loops: Availability of hearing loops in all locations where the City Council meets and a new city ordinance that requires loop installation in new construction and remodels of public venues.
- Revision of the ordinance governing noise levels during outside events in the Plaza and public parks
- Enforcement of noise ordinance:
 - Traffic calming
 - Mufflers required and enforced
 - DBA level at concerts/enforcement In public venues/events

Housing Subcommittee (Kathlyne)

- Income source anti-discrimination laws: Promote updated city ordinance that requires landlords to accept legitimate income sources from potential tenants (but the landlord would still retain discretion with credit, etc.). Landlords currently do not have to accept all legitimate types of income to evaluate potential tenants. This is particularly a problem for people who are disabled, veterans, and seniors. Other cities have fixed this with an ordinance.
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- Transitional housing for people coming out of jail/institutions.
- Explain process and benefits of accepting housing vouchers on the City website, and include PSA by Ms. Kyra Ochoa, who had housing-voucher tenants and had a good experience (other cities have examples we can examine).

Plan Review Subcommittee (Hope)

The MCD Plan Review Subcommittee has been reviewing city plans since 1985. The Subcommittee provides ADA accessibility review of public works project for new or remodeled public use projects such as; buildings, streets/sidewalks, parks, transportation stations/stops, and similar facilities. Through the use of required federal, state, and local accessibility laws and codes, as well as existing guidelines and best practices, the Subcommittee seeks the best solution to serve the greatest number of people with disabilities. In addition, the Subcommittee is also available to provide accessibility recommendations to other entities upon their request.

- Need interior plans for southside bus depot
- *(Pending – In Progress)* Fort Marcy Park: Bus stop has no map or guidance for bus riders to access park safely/indicate distance, pathways, etc.
- *(Pending – In Progress)* Accessible/inclusive parks in Santa Fe.
 - Update play areas in city parks to allow wheelchair access (phase out and replace wood chips and add inclusive play equipment).
- Maintenance of City parking lots, streets, sidewalks, crosswalks, pathways, and bike trails in accordance with ADA regulations.
- Review of city construction and remodeling projects by plan Review Subcommittee for adherence to ADA guidelines.

- Ongoing sidewalk improvements, barrier removal, and repairs, and update of PROW list as projects are completed (20-year time frame unless more funding obtained):
 - Obstructed, narrow, sidewalks – light poles, fire hydrants, etc.)
 - East Palace Avenue - steep curb cut with parking meter obstructing.
 - East Palace/Washington Ave – Ice builds up in crosswalk if snow is not cleared
 - Canyon Road (and many others) light poles obstructing.
 - Sidewalks lacking, lacking curb cuts, etc. in all four districts (including below):
 - *(Pending – In Progress)* Ventana de Vida along Pacheco to St. Michael's
 - *(Pending – In Progress)* Henry Lynch between Agua Fria and Rufina
NOTE: Sidewalk repair: The stretch of Pacheco between the Ventana de Vida senior center and St. Michael's Drive has no existing sidewalk, thus impeding access to the local shopping. This is a high priority and expected to be addressed next after some work on Agua Fria, but the city has a huge, prioritized list of sidewalk repairs that could benefit from a share of a gas tax or other funding mechanism.
- *(Pending – In Progress)* Fix pedestrian bridge and pathways in Fort Marcy Park to make them accessible to wheelchairs and scooters; install temporary signage with directions to accessible route until repairs done.
- *(Pending – In Progress)* Review the Transition Plan to identify the outstanding upgrades needed to PROWs.

Dave McQuarie Memorial Subcommittee (Hope)

- Dave McQuarie Memorial Plaque in Santa Fe

Post-Traumatic Stress Subcommittee (Kathlyne)

- Awareness of Post-Traumatic Stress (PTS) as it is impacted by noise ordinance issues and PTS symptoms/sensory awareness – noise can be very harmful for behavioral health.
- Building community awareness of the PTS Spectrum— to facilitate a more civil, inclusive, and productive discourse around PTS issues. PTS is not considered a disorder in current parlance, and it's counterproductive to refer to it that way. PTS is a condition that exists on a spectrum. On one end of the spectrum exists a state of being that afflicts us all, by virtue of our births— PTS. On the other end of the spectrum exists a disabling state of being that afflicts some, by virtue of the intensity, frequency, and/or duration of exposure to trauma inducing events— disabling PTS. In between these two ends of the spectrum exists another state of

being, where functionality may be impaired or limited, and aspects of personal and professional life may be adversely affected— problematic PTS.

- Susceptibility to problematic and disabling PTS: Certain populations in our community are more susceptible to problematic and disabling PTS by virtue of their circumstances. Populations highly susceptible to problematic and disabling PTS include but are not limited to food insecure; homeless; immigrant; incarcerated; LGBTQ+; minority; physically, sexually, and/or psychologically abused; substance abuse; unemployed; and veterans. The subcommittee will increase community awareness to better understand problematic and disabling PTS in these and other highly susceptible populations to the City of Santa Fe.
- Services available to those with problematic and disabling PTS: There are a multitude of local services available to those with problematic or disabling PTS; the Subcommittee will bring awareness of gaps in current services and the need for other effective treatment solutions not currently offered that would be of benefit to our community in order to reduce negative individual, social and economic consequences of problematic and disabling PTS in Santa Fe.

Transportation Subcommittee (Aurore)

- *(Pending – In Progress)* Cerrillos Road bus transfer station access – light pole in the way of sidewalk that inhibits accessible wheelchair route between Santa Fe Place Mall and the Southside bus station.
- *(Pending – In Progress)* Bus stop in front of Indian Hospital – update for accessibility and curb cuts.
- 24/7 public transportation: This is needed for safety and medical reasons. Poor people and abuse victims are most vulnerable to transportation challenges. A poor person with a sick child might delay medical care because there is no transportation. City of Santa Fe activities and SFCC classes end at 10:00pm, but Transit has ended operations.
- Emergency evacuation plan for paratransit/bus users and seniors.
- Increase transportation access to residents who lack private transportation access.
- Bus accessibility: older residents and those who can't stand long have difficulty using bus stops without benches. Add benches where possible to bus stops that serve the elderly and disabled people, such as outside of medical service providers, stores/shopping areas, residential areas.
- Transportation cost assistance for paratransit users: Economical bus passes are available to all Santa Feans, but for persons who must use paratransit for all transportation, there are no programs that would help income-qualified people with these expenses.
- Free transportation for youth/low-income adults who use paratransit.

- Explore possible permanent dashboard display of disability parking placard for those with memory issues.
- Private vehicle 'Emergency Notification System' for people with disabilities, non-verbal people, seniors, and others with health and safety needs.

Mayor's Committee General Business (Kathlyne)

- Update/modernize City Website to be ADA accessible/compliant, and assure accurate, up to date, and clearly written/organized information.
- Update online systems to maintain and expand inclusive and accessible hybrid/online Committee, Board, City Council (etc.) meetings.
- MCD Webpages
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 - Educational campaign to encourage installation of adult changing tables in public and commercial facilities. Ask Chamber of Commerce and City to recognize these efforts and produce a map/app of available facilities



City of Santa Fe Returning to In-Person Meetings Beginning Wednesday, May 11

Public Comment Will Be Taken In-Person Or As Written Comment

SANTA FE, May 9, 2022 – The City of Santa Fe will return to in-person meetings beginning Wednesday, May 11, 2022. Governing Body meetings, Council committees, Planning Commission meetings and Historic Districts Review Board meetings will be held in-person AND streamed live on YouTube. Governing Body will also be on Comcast and KSFR. All other City boards and commission meetings will be held in-person.

Residents who wish to participate in meetings can either attend in-person OR submit written comment via [PrimeGov](#). The written comment option may be accessed by clicking on the comment icon to the right side of each meeting. The written comment option allows comment on action items, legislation, and petitions from the floor (items not on the agenda). **Written comment must be submitted at least four hours before a meeting starts and is distributed to all committee members in advance of the meeting.**

The State's Open Meetings Act requires board/commission/committee members to participate in-person unless it is difficult or impossible to be present. City of Santa Fe ordinance currently also requires there be a declared emergency for board/commission/committee members to participate remotely.

For the last two years, remote meetings (Zoom) were possible for City boards and committees because there was both a declared emergency and it was difficult or impossible for all members to meet in person. These difficulties included, but were not limited to, the limitations imposed by Emergency Orders issued by the City and State; the danger of infection to staff, members, and the public; and staffing and technology limitations.

As the public health situation has improved, the City has prepared for all meetings to be on-site and in-person again, beginning on Wednesday, May 11, 2022.

The City is working to transition to improved technology and to review and revise legislative requirements that would allow the institution of hybrid meetings for the public to participate live and remotely again in the near future.

The list of upcoming meetings and relevant agendas/packet materials is available on [PrimeGov](#). The live-streams of meetings are available on the [City of Santa Fe's YouTube channel](#).

*Tonight's Public Works and Public Utilities meeting will be held in person as a trial run. Tomorrow's meetings will be virtual. **All meetings will transition to in-person beginning with Governing Body on May 11, 2022.***

Meeting	How to Watch	How to Comment
Governing Body (beginning Wednesday, May 11)	In-person, YouTube, Comcast, or listen on KSFR	In-person or written comment
Council Committees (Public Works/Public Utilities, Quality of Life, Finance Committee)	In-person or on YouTube	(Only Public Works has public comment) – In-person or written comment
Planning Commission and Historic Districts Review Board	In-person or on YouTube	In-person or written comment
All Other Committees, Commissions, and Boards	In-person	In-person

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

**Open Government Division Advisory
During COVID-19 State of Public Health Emergency**

On March 11, 2020, Governor Michelle Lujan Grisham declared a state of emergency in New Mexico, issued under Executive Order 2020-004. The Attorney General, through the Open Government Division is statutorily tasked with enforcing the Open Meetings Act, NMSA 1978, NMSA 1978, §§ 10-15-1 to -4 (1974, as amended) and the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -14 (1947, as amended). As such, Attorney General Balderas issues the following guidance to public entities across the State of New Mexico regarding their ongoing obligations to comply with the Open Meetings Act (OMA) and the Inspection of Public Records Act (IPRA) during the state of emergency in New Mexico.

The Office of the Attorney General's Open Government Division (OGD) advises all public entities subject to the OMA to first and foremost follow the guidance of the Department of Health and other health officials to ensure the health and safety of both members of the entity and the public. Accordingly, the most prudent thing to do to ensure compliance with OMA would be to postpone/cancel a public meeting. If, however, a board or commission has a time-sensitive matter to attend to, it may proceed with a virtual meeting, provided its notice of meeting contains detailed information (password, phone number, etc.) about how members of the public may attend and listen via telephone, live streaming or other similar technologies. More specifically, if a public body decides to proceed with a virtual meeting, it should:

- At the start of the meeting, the chair should announce the names of those members of the public body participating remotely.
- All members of the public body participating remotely must identify themselves whenever they speak and must be clearly audible to the other members of the public body and to the public.
- Members of the public should be afforded remote access, via live stream or other similar technology, if possible, or call-in number for listening by phone.
- Chair should suspend discussion if the audio or video is interrupted.
- All votes of the public body must be by roll call vote.

- The public body should produce and maintain a recording of the open session of the meeting.

Additionally, we are assuming the public body's staff also would be working remotely; otherwise, the staff at least theoretically would have the ability to set up a physical location for the public to listen in. In sum, we believe OMA would require that public bodies cancel or reschedule their meetings whenever possible and opt for a virtual format only as a matter of last resort during the pendency of the public health emergency.

To maintain compliance with the Inspection of Public Records Act, OGD recommends that agencies in the first instance continue to satisfy IPRA's deadlines and fulfill IPRA requests electronically, if possible.

Pursuant to public health guidelines and the closure of many public entities' physical locations during the state of emergency, public entities should suspend all in-person inspection of public records during the pendency of the state of emergency. Acknowledging that there may be limited circumstances where records are not available electronically, an agency may designate a request as excessively burdensome or broad, which would allow an agency obtain more time to respond and/or compile documents. We also acknowledge there may be circumstances in which an agency may not be able to provide certain records because employees normally in possession of those records are working from home and do not have the requested records readily available.

In short, IPRA all deadlines should still be satisfied. Where the state of the public health emergency hampers an agency's ability to respond, we urge the agency nonetheless to communicate promptly with the requester to make alternative arrangements to allow for the inspection of records, in keeping with the general spirit of the law.

In addition, with respect to professional licenses issued under the Uniform Licensing Act, NMSA 1978, NMSA 1978, §§ 61-1-1 to -34 (1957, as amended), after consultation with OGD, we understand that the Boards & Commissions Division of the New Mexico Regulation and Licensing Department will be reaching out to the chairpersons of the various professional licensing boards administratively attached to RLD to get approval for the following:

- (1) Boards and Commissions staff will process renewals without the proof of continuing CE credit needed for renewal during the pendency of the public health emergency instituted by Executive Order 2020-004.
- (2) Licensees submitting renewals without the sufficient CE credits will be required to give notice to the board or commission through the notice procedures established by the Boards and Commissions Division dated March 16, 2020 (also attached hereto).
- (3) If all other license renewal requirements are met, licenses will be renewed without proof of CE credits.

(4) When the public health emergency is lifted, Boards and Commissions staff will send out a notice to licensees stating that the licensee has 3 to 6 months, depending upon the Board or Commission, to submit their proof of CE or be subject to discipline by the Board.

Without purporting to provide legal advice to outside entities, the OAG and OGD remain available to answer general questions regarding compliance with OMA and other laws of general application, as appropriate.



MICHELLE LUJAN GRISHAM
Governor

DAVID R. SCRASE, M.D.
Acting Cabinet Secretary

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
ACTING SECRETARY DAVID R. SCRASE, M.D.**

April 15, 2022

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, masks, social distancing, and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.
2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:
 - A. December 15, 2020, Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division;
 - B. January 8, 2021, Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;
 - C. April 5, 2021, Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19;



- D. February 26, 2021, Public Health Emergency Order Implementing Administration Requirements for All COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine; and
- E. December 2, 2021, Amended Public Health Emergency Order Requiring All School Workers Comply with Certain Health Requirements and Requiring Congregate Care Facility Workers, Hospital Workers, and Employees of the Office of the Governor Be Fully Vaccinated and Receive Booster Vaccines.

3. The March 18, 2022, Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose Certain Public Health Measures is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through April 30, 2022;

WHEREAS, confirmed cases in the United States have risen to more than 79 million and confirmed COVID-19 infections in New Mexico have risen to over 519,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 1,000,000 Americans and over 7,400 New Mexicans;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, vaccination, social distancing, and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state

government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, David R. Scrase, M.D., Acting Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

I HEREBY DIRECT AS FOLLOWS:

(1) Unless a healthcare provider instructs otherwise, all individuals ages 2 years and older shall wear a mask or multilayer cloth face covering in all public hospitals, profit or nonprofit private hospitals, general hospitals, special hospitals, nursing homes, assisted living facilities, adult day cares, hospice facilities, rehabilitation facilities, State correctional facilities, juvenile justice facilities, residential treatment centers, the New Mexico State Veterans' Home, and community homes except when eating or drinking. Nothing in this Order shall be construed as prohibiting any business, house of worship, non-profit entity, or other entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the New Mexico Environment Department when there is an occurrence of a rapid response. The New Mexico Environment Department shall monitor when an entity has four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Environment Department so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices.

(4) Public and private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall continue to adhere to the face covering requirements contained in the New Mexico Public Education Department's "COVID-19 Response Toolkit for New Mexico's Public Schools," available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, until the school district, governing local education agency, or private educational institution elects otherwise. Public and private educational institutions shall adhere to the other COVID-Safe Practices requirements for in-person instruction contained in the COVID-19 Response Toolkit for New Mexico's Public Schools and may operate up to maximum capacity. Public and private educational institutions shall follow the reporting, testing, and closure

requirements set forth by the Public Education Department in the COVID-19 Response Toolkit for New Mexico's Public Schools.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish, and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

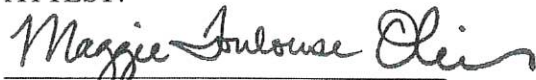
(3) Nothing in this Order is intended to restrain or preempt local authorities or state agencies from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through May 16, 2022.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under NMSA 1978, Section 12-10A-19.

ATTEST:



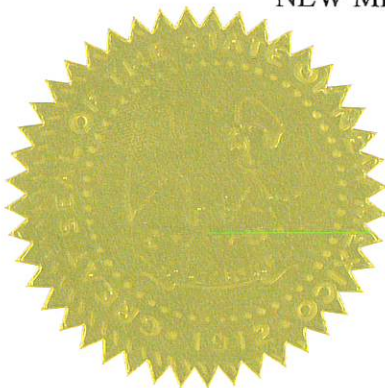
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 15TH DAY OF APRIL 2022

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO



DAVID R. SCRASE, M.D.
ACTING SECRETARY OF THE
NEW MEXICO DEPARTMENT OF HEALTH



Nessel pens opinion regarding virtual participation in public meetings

By Grace George ggeorge@record-eagle.com

Feb 6, 2022



TRAVERSE CITY — Michigan Attorney General Dana Nessel released a written legal opinion that would allow virtual participation in public meetings for individuals with a disability.

According to Nessel’s opinion, which was released Friday, state and local boards and commissions are required to provide “reasonable accommodations”, including options for virtual participation, to individuals with a disability who request accommodations in order to fully participate in public meetings. Those individuals can either be members of the general public or members of the board or commission.

On its face, the Open Meetings Act (OMA) requires meetings to occur in person and makes no mention of accommodations, but the Americans with Disabilities Act (ADA) and the Rehabilitation Act require government entities to make accommodations, such as options for virtual participation, for individuals with a disability, Nessel wrote.

During the past two years, executive orders from Gov. Gretchen Whitmer and laws passed by the state legislature permitted government boards and commissions to meet virtually as a response to the threat posed by the COVID-19 pandemic. Those allowances expired on Jan. 1, making virtual participation in public meetings no longer permissible.

On Jan. 14, State Sens. Wayne Schmidt and Jeff Irwin sent a joint letter to Nessel requesting a formal opinion addressing the question of whether the ADA or Rehabilitation Act allows or requires government entities to provide accommodations to public meetings, such as virtual participation, to individuals with disabilities.

In the letter, Irwin and Schmidt referred to it as a matter of “great urgency and importance”.

“I appreciate the quick action on this important issue by the Attorney General,” Schmidt said in an email. “It was important to me to work with my colleague State Senator Jeff Irwin to ensure that all Michiganders can participate on state and local boards and commissions subject to the Open Meetings Act. It’s the right thing to do.”

Nessel’s opinion cannot be used by individuals who are concerned about catching COVID at a meeting, she said at a Friday press conference. The person requesting accommodations must qualify as having a disability, as defined by the ADA.

Nessel said she would encourage boards to be proactive in determining how discussions around accommodations will take place and what the accommodations will look like.

A public entity could deny a request for an accommodation if it caused an undue burden on the board or commission in question. However, the OMA allows military personnel to join and participate in public meetings remotely and government boards and commissions have been meeting virtually throughout the past two years, so proving undue burden may be difficult, Nessel said.

The opinion is only binding for state boards, but Nessel said she encourages local boards and commissions to follow the guidelines of this opinion as well and that it would be “very persuasive in the courts.”

Rob Hentschel, chair of the Grand Traverse County Board of Commissioners, said he would want to talk to his board’s legal counsel and the people who handle technology for the county board of commissioners about how this opinion would apply to his board and whether making such accommodations would be burdensome or cause issues for the board.

Scott Newman-Bale, president of the Traverse City Area Public Schools board of education, also said he would also like further clarification of how this opinion would relate to his board from legal counsel and the Michigan Association of School Boards (MASB).

“We are still under the OMA, which says we can’t do it,” Newman-Bale said. “So I think it still has to play out a little bit.”

If the opinion were to fully apply to the school board, Newman-Bale said the board would likely implement a new policy in its bylaws to incorporate the board’s ability to make accommodations and outline the process of handling an accommodation request.

Benjamin Marentette, Traverse City’s City Clerk, said he agreed with the concept of the opinion — making public boards more accessible — and that it is something the city will consider closely and consult their legal counsel about.

“Anytime we open up public meetings for more people to participate is a good thing,” Marentette said.

Marentette said he believes that the OMA should have amendments that allow virtual participation for all, regardless of ability, and that that participation could be over platforms like Zoom or even through a phone call.

Unlike the previous bills and executive orders that made specific adjustments in light of the pandemic, this opinion’s relevance would not expire, Nessel said.

“While this opinion, obviously, is very useful now, during the course of the COVID pandemic context, it’s useful really beyond the scope of just COVID,” Nessel said. “So it pertains to disability at any time for any legitimate reason.”

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Grace George

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

OPEN MEETINGS ACT:

Providing reasonable accommodations to qualified individuals with a disability who request them in order to fully participate in meetings that are required by the Open Meetings Act to be held in a place available to the general public.

AMERICANS WITH DISABILITIES
ACT:

REHABILITATION ACT:

The Americans with Disabilities Act, 42 USC 12131 *et. seq.*, and Rehabilitation Act, MCL 395.81 *et. seq.*, require state and local boards and commissions to provide reasonable accommodations, which could include an option to participate virtually, to qualified individuals with a disability who request an accommodation in order to fully participate as a board or commission member or as a member of the general public in meetings that are required by the Open Meetings Act, MCL 15.261 *et. seq.*, to be held in a place available to the general public.

Opinion No. 7318

Date: February 4, 2022

The Honorable Jeff Irwin
State Senator
The Capitol
P.O. Box 30036
Lansing, MI 48909

The Honorable Wayne Schmidt
State Senator
The Capitol
P.O. Box 30036
Lansing, MI 48909

You have requested an opinion on how Michigan’s Open Meetings Act (OMA) intersects with federal law when a person with a disability either serves on a body subject to the OMA or desires to fully participate in the meetings of such a body and requests an accommodation for their disability. Specifically, you have asked whether the Americans with Disabilities Act or Rehabilitation Act allows or requires state and local boards and commissions to provide reasonable accommodations, such as the option to participate virtually, to individuals with disabilities who have been elected or appointed to serve or wish to fully participate as members of the public and have requested an accommodation. You note that this issue is “especially important as the COVID-19 pandemic poses a real threat to the health and safety of people serving their state and local governments,” and that the absence of such options “threatens the health and safety of people with disabilities and/or those who are immuno-compromised serving in local government offices and of those wanting to participate in public meetings.”

Your question requires an understanding of both the OMA and federal laws that govern access to public meetings.

The OMA, 1976 PA 267, as amended, MCL 15.261 to 15.272, was intended to “promote a new era in governmental accountability,” *Booth Newspapers v Univ of Mich Bd of Regents*, 444 Mich 211, 222–223 (1993), “by facilitating public access to official decision making and to provide a means through which the general public may better understand issues and decisions of public concern,” *Vermilya v Delta College Bd of Trustees*, 325 Mich App 416, 419 (2018) (quotation omitted). To that

end, section 3 of the OMA requires that, “[a]ll *meetings* of a *public body* must be open to the public and must be held *in a place* available to the general public.” MCL 15.263(1) (emphasis added).

The word “[m]eeting” and the term “[p]ublic body” are specifically defined in the OMA. In particular, a “[m]eeting” is the “convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 40 of the home rule city act” MCL 15.262(b). And a “[p]ublic body” means “any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 40 of the home rule city act” MCL 15.262(a).

What is not defined in the OMA, however, is the phrase “in a place available to the general public,” and it is this language that is most relevant to your question as it pertains to the OMA. Undefined statutory terms should be given their plain and ordinary meanings, for which dictionaries may be consulted. *Koontz v Ameritech Servs Inc*, 466 Mich 304, 312 (2002). Doing that here, and breaking the phrase down, the word “in” is “used as a function word to indicate inclusion, location, or position within limits,” In Definition & Meaning - Merriam-Webster,

<https://www.merriam-webster.com/dictionary/in?src=search-dict-box> (accessed February 1, 2022), and the word “place” may be commonly understood to mean, a “physical environment,” Place Definition & Meaning - Merriam-Webster,

<https://www.merriam-webster.com/dictionary/place> (accessed February 1, 2022).

Therefore, the plain and ordinary meaning of “in a place” is a location or position within a physical space. And because the meetings of a public body *must* be held in such a physical space, the OMA does not contemplate wholly virtual meetings.¹

The conclusion that the OMA, when enacted, envisioned meetings being held within a physical space, and not a virtual one, is further supported by recent amendments to the act. On December 22, 2020, the OMA was amended because of the COVID-19 pandemic, and strict compliance with section 3 of the OMA was suspended to alleviate physical-place or physical-presence requirements.² These amendments not only instituted social-distancing and cleaning protocols, but also permitted both remote participation by board members and completely virtual meetings for the safety of board members and the general public. MCL 15.263(2) and MCL 15.263a(1)(b).³ Obviously, such amendments would not have been

¹The words of a statute are to be interpreted in the sense in which they were understood at the time the statute was enacted. See *Cain v Waste Mgt Inc*, 472 Mich 236, 258 (2005). At the time the OMA was enacted, the Legislature could not have envisioned today’s technological options and the ease with which they allow for remote participation by members and the public. Although it could be argued that a virtual platform is a “place” available to the general public, that is not the most natural reading of the Act or consistent with what would have been understood at the time the OMA was enacted.

² The Governor had previously issued Executive Order 2020-154, which similarly suspended strict compliance with section 3 of the OMA in light of the pandemic.

³ Public bodies had to establish procedures by which an absent member could participate in, and vote on, business before the public body, including, but not limited to, procedures that provided both

necessary if the language of the OMA previously and otherwise allowed for such virtual proceedings and remote participation.

As of January 1, 2022, however, a significant portion of those procedures and protocols have now expired, and the OMA no longer contains an exception to in-person meetings or for a non-military member's in-person attendance at a meeting.⁴ So once again, the OMA does not generally provide any affirmative accommodation, upon request, for a disabled individual's access to a public body on which he or she serves, and more importantly, may not allow for a disabled public body member, including one who is immuno-compromised or has other health issues, to be accommodated to fully participate in public meetings. Likewise, its provisions do not affirmatively require accommodations for members of the general public who are disabled, including those who are immuno-compromised, to access and fully participate in meetings of public bodies because the OMA does not require public bodies to provide virtual or other remote access to disabled members of the public upon request.

for two-way communication, and, for members of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member was attending the meeting remotely. MCL 15.263(2)(a)(i) & (ii). If the member was attending the meeting remotely for a purpose other than for military duty, the member's announcement had to further identify specifically the member's physical location by stating the county, city, township, or village and state from which he or she was attending the meeting remotely. MCL 15.263(2)(a)(ii). Finally, the public body had to establish procedures by which it provided the public notice of the absence of the public body member and information about how to contact that member sufficiently in advance of a meeting of the public body to provide input on any business that would come before the public body. MCL 15.263(2)(b).

⁴ Amendments to the OMA from 2018 that allowed for remote participation to "accommodate the absence of any member of the public body due to military duty" remain in effect. See 2018 PA 485, MCL 15.263(2).

In short, there is nothing in the OMA that *requires* a public body to accommodate a disabled member of that body, or a disabled member of the general public, who is unable to attend an in-person meeting of that body due to a medical condition, including an immuno-compromised condition, and requests an accommodation. In fact, the OMA does not even address the issue of accommodation.

Given the lack of provisions to accommodate the disabled under the OMA, it is important to look at what accommodations are afforded the disabled under federal law.

The Americans with Disabilities Act (ADA) is a broad remedial civil rights law enacted to provide uniform federal protections for the disabled and to address the historic and pervasive discrimination against people with disabilities in all areas of public life.⁵ In enacting the ADA, Congress declared that “discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting,” and, relevant to your question, “access to public services.” 42 USC 12101(a)(3). This discrimination, Congress noted, “continue[s] to be a serious and pervasive social problem,” 42 USC

⁵ In 2018, the CDC said that one in four adults – 61 million Americans – had a disability that impacted their major life activities. CDC’s Morbidity and Mortality Weekly Report, <https://www.cdc.gov/mmwr/index.html> (accessed February 1, 2022).

12101(a)(2), that denies people with disabilities the opportunity to compete and pursue opportunities on an equal basis, 42 USC 12101(a)(8).

Section 504 of the Rehabilitation Act, “parallels th[is] command of the ADA concerning accessibility to public facilities for persons with disabilities,” *Mote v City of Chelsea*, 391 F Supp 3d 720, 740 (ED Mich, 2019), with the biggest difference being that the Rehabilitation Act applies only to a “program or activity receiving Federal financial assistance.” See generally, *Babcock v Michigan*, 812 F3d 531, 540 (CA 6, 2016). Claims under the Rehabilitation Act are reviewed under essentially the same standard as claims under the ADA, so the analysis is generally the same for both. *Id.* Therefore, for ease of reading and analytical purposes, this opinion will focus on the ADA and not separately discuss the Rehabilitation Act.⁶

As an initial matter, the ADA does not “invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.” 28 CFR 35.103(b). But the ADA does contemplate modification to, and thereby preemption of, state laws when necessary to effectuate the protections afforded under the ADA. *Mary Jo C v New York State & Local Ret Sys*, 707 F3d 144, 163 (CA 2, 2013). As

⁶ It should also be noted that Michigan’s Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et. seq.*, and the ADA “share the same purpose and use similar definitions and analyses.” *Chiles v Machine Shop Inc*, 238 Mich App 462, 472-473 (1999). Because your request specifically asks about federal law as it relates to the OMA, this opinion will not separately discuss the PWDCRA either. But Michigan courts frequently “look to the ADA and federal cases interpreting the ADA for guidance” in analyzing PWDCRA cases. *Id.*

discussed, Michigan’s OMA fails to provide *any* affirmative accommodations for disabled individuals to fully participate in public meetings. Therefore, to the extent the OMA is inconsistent with what is required under the ADA, the OMA is preempted.

The ADA consists of three Titles, only one of which—Title II—is relevant here. Title II is brief, but there is a lot packed into a few words: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 USC 12132. For purposes of Title II, a “public entity” is “(A) any State or local government; (B) any department, agency, special purpose district *or other instrumentality of a State or States or local government . . .*” 42 USC 12131(1)(A)(B) (emphasis added). Therefore, “instrumentalities” such as local and state boards and commissions are public entities under Title II. Moreover, Title II’s language is broad enough to include both board members and members of the general public seeking to fully participate in a public entity’s public meetings.

Under Title II, two types of claims are cognizable: claims for intentional discrimination and claims for a reasonable accommodation. *Ability Ctr of Greater Toledo v City of Sandusky*, 385 F3d 901, 907 (CA 6, 2004). It is the latter type – a claim for a reasonable accommodation – that most relates to your question.

When seeking an accommodation to fully participate in board meetings, a board member or a member of the general public must show that they have a “disability” and that they are a “qualified individual with a disability” as those terms are understood under the ADA. The definition of “disability” that is most relevant here is “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.” 42 USC 12102(1)(A). And a “qualified individual with a disability” is “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 42 USC 12131(2).

Your request indirectly raises the question of whether those who are immuno-compromised have a disability under the ADA. It should be noted that, “[f]or purposes of [defining disability under § 12102(1)], major life activity . . . includes the operation of a major bodily function, including but not limited to, functions of the immune system [and] normal cell growth” 42 USC 12102(2)(B). That definition incorporates amendments to the ADA enacted in 2009 as part of the ADA Amendments Act (“ADAAA”), which broadened the scope of ADA coverage by expanding the definition of disability.

To that end, 29 CFR 1630.2(j)(3)(iii) lists examples of impairments that, at a minimum, substantially limit major life activities—including cancer, which

substantially limits normal cell growth, and Human Immunodeficiency Virus (“HIV”) infection, which substantially limits immune function. See *Katz v Adecco USA, Inc*, 845 F Supp 2d 539, 548 (SD NY, 2012) (“Cancer will virtually always be a qualifying disability [because it limits normal cell growth].”) (quotation marks omitted). Nevertheless, even for those impairments, courts often require an individual assessment. See, e.g., *Alston v Park Pleasant, Inc*, 679 F App’x 169, 171—172 (CA 3, 2017) (agreeing that cancer can—and generally will—be a qualifying disability under the ADA, but nevertheless noting that an individual assessment of whether an impairment substantially limits a major life activity must still take place). Impairments not on the list will assuredly require an assessment of their effect on the individual. *Scavetta v Dillon Cos, Inc*, 569 F App’x 622, 625—626 (CA 10, 2014) (declining to reference major bodily functions in its jury instruction because there was no specific evidence that the plaintiff’s rheumatoid arthritis substantially limited the operation of her major bodily functions); *Hustvet v Allina Health Sys*, 910 F3d 399, 411 (CA 8, 2018) (holding that there was insufficient evidence in the record to support the conclusion that the plaintiff’s chemical sensitivities or allergies substantially or materially limited her ability to perform major life activities, as she had never been hospitalized due to an allergic or chemical reaction, never seen an allergy specialist, never been prescribed an EpiPen, never sought significant medical attention when experiencing a chemical sensitivity, taken prescription medication because of a serious reaction, or had to

leave work early because of a reaction; and concluding that this was garden-variety allergies that only moderately impacted her daily living.)

In light of the above, and because all showings of a “disability” under the ADA are heavily fact-dependent and resolved on a case-by-case basis, it cannot be stated that, in all situations, an immuno-compromised individual is a “qualified individual with a disability.” But the existence of such a condition, or any other underlying condition, that makes an individual particularly susceptible to contracting an illness or disease such as COVID-19 if they were to attend a meeting in a public, physical space, could very well form the basis for a sufficient showing. See e.g., *Silver v City of Alexandria*, 470 F Supp 3d 616 (WD La, 2020) (holding that a 98-year-old man with a pacemaker due to inoperable and dangerous heart conditions who sought an accommodation so that he could attend city council meetings by telephone during COVID-19 “easily” had a qualifying disability and “[n]either the ADA nor the Rehabilitation Act contain any language to limit application to certain environmental or health-related situations.”)⁷

Assuming a request for an accommodation is received from a “qualified individual with a disability,” the next step is to determine whether the requested accommodation is appropriate under the “reasonable-modifications regulation,” *Olmstead v L C ex rel Zimring*, 527 US 581, 581 (1999); 28 CFR 35.130(b)(7). A

⁷ Even if an immuno-compromised individual does not meet the definition of “disabled” under the ADA, state and local boards and commissions are encouraged, where possible, to err on the side of inclusiveness, public participation, and transparency.

modification or accommodation “is reasonable unless it requires ‘a fundamental alteration in the nature of a program’ or imposes ‘undue financial and administrative burdens.’” *Smith & Lee Assoc, Inc v City of Taylor*, 102 F3d 781, 795 (CA 6, 1996), quoting *Southeastern Community College v Davis*, 442 US 397, 410, 412 (1979); 28 CFR 35.150(a)(3).

Therefore, when a request for an accommodation is received from a qualified individual with a disability, a state or local board or commission must consider whether it can modify its meetings without incurring an undue burden or fundamentally altering the nature of the meetings. Historically, the kinds of modifications that have been requested have addressed physical or communication barriers, which have been remedied by disabled ramps, closed captioning, and the like. It is crucial that efforts aimed at removing those types of barriers continue. But medical conditions that make physical presence dangerous or impossible highlight a different but equally important need, and physical-presence requirements such as those of the OMA present an equally troubling barrier—one that potentially excludes the disabled as effectively as the lack of handicapped accessible parking or a wheelchair ramp. *Tennessee v Lane*, 541 US 509, 531 (2004), citing 42 USC 12131(2)) (noting that Congress recognized that failing to accommodate persons with disabilities will often have the same practical effect as outright exclusion).

Determining what reasonable modifications might remedy such a barrier is, also, a heavily fact-dependent inquiry that must be determined on a case-by-case

basis, considering the nature, location, and resources of a particular board or commission. (Some municipalities might have IT challenges, for example.) But because our boards and commissions already must, under the OMA, provide remote access and allow full participation for a member of the military, and because many of these boards and commissions have successfully gone wholly or partially virtual during the COVID-19 pandemic, it seems unlikely that a request for a hybrid approach of an in-person meeting and telephonic access or a virtual platform would result in an undue administrative or financial burden or constitute a fundamental alteration of a board's or commission's meetings. See *Hindel v Husted*, 875 F3d 344, 348 (CA 6, 2017). This is especially true given the prevalence, ease, and affordability of setting up remote platforms.

That said, a request for a *fully* virtual option is more likely to be viewed as a fundamental alteration of a board's or commission's services, and therefore not required. More importantly, where that option is not necessary to accommodate a qualified individual with a disability, the ADA does not require it and the OMA would not permit it. The Legislature's clear intent behind the OMA was to have in-person meetings. The Legislature, of course, could amend the OMA to permit fully virtual meetings. The potential benefits are many, including greater transparency, increased public involvement and participation, and the avoidance of singling out disabled board members who are participating remotely. The latter benefit would

have particular impact in the context of boards that require one or more members with disabilities, such as Michigan’s barrier-free design board.⁸

Finally, while a board’s or commission’s careful consideration of modifications is important, its duties with respect to the ADA are broader than simply being responsive to requests. Title II regulations actually require public entities to evaluate their current services, policies and practices, and their effects, that “do not or may not meet the requirements [of Title II of the ADA],” and if modification of services, policies, and practices is needed to achieve compliance, make the necessary modifications. 28 CFR 35.105(a). These are referred to as self-evaluation plans.

In its Title II Technical Assistance Manual, the Department of Justice suggests certain areas that need “careful examination” in an agency’s self-evaluation plan, including the modifications needed to achieve program access, and the steps that will be taken to achieve access; whether policies and practices exclude or limit participation of people with disabilities; and whether equipment has been assessed for usability and there are policies to ensure that it is kept in working order. See ADA TITLE II TECHNICAL ASSISTANCE MANUAL, *See* 28 CFR 35.150(c) at § II-8.2000. The ADA Title II Action Guide for State and Local Governments suggests that a self-evaluation plan should address these additional

⁸ The Barrier Free Design Board, created by 1974 PA 190, amending 1966 PA 1, MCL 125.1355, has jurisdiction to review and grant or deny requests for exceptions to the barrier free design specifications; require alternatives when exceptions are granted; receive, process, review, and act on complaints of noncompliance, and make recommendations for barrier free design rules.

More information is available at https://www.michigan.gov/lara/0,4601,7-154-89334_10575_45904-347265--,00.html (accessed February 1, 2022).

Title II requirements: 1) the agency's process for responding to requests for modifications; 2) the process for determining whether a modification would be a fundamental alteration; 3) whether the agency has any separate programs for people with disabilities, and if so, 4) whether people with disabilities are excluded from participation in regular programs; and 5) whether programs are provided in the most integrated setting appropriate to the needs of people with disabilities.

*Title II Action Guide for State and Local Governments.*⁹

Accordingly, even without being asked to respond to specific requests for accommodations (and before being required to engage in the necessarily fact-intensive analysis set out above to determine whether a requestor is a “qualified individual with a disability”), state and local boards and commissions are strongly encouraged to proactively evaluate the services they provide and, to the extent reasonably possible, offer alternatives to completely in-person, physical meetings to allow this new era of technology to truly promote a new era in governmental accountability, transparency, inclusivity, and participation.

It is my opinion, therefore, that the Americans with Disabilities Act and Rehabilitation Act require state and local boards and commissions to provide reasonable accommodations, which could include an option to participate virtually, to qualified individuals with a disability who request an accommodation in order to

⁹ Available at <https://www.adaactionguide.org/action-steps> (accessed February 1, 2022).

fully participate as a board or commission member or as a member of the general public in meetings that are required by the Open Meetings Act to be held in a place available to the general public.

A handwritten signature in black ink that reads "Dana Wessel". The signature is written in a cursive, flowing style.

Attorney General



Seeking Candidates for Committee Membership for the Mayor's Committee on Disability (MCD)

SANTA FE, NM, April 22 – The Mayor's Committee on Disability (MCD) is seeking candidates for a position on the committee. Committee members are appointed by Mayor Alan Webber to work with and for people with and without disabilities to ensure access for all by eliminating physical and attitudinal barriers, improving participation in the community and for the enrichment of all. The appointed member may be a person with a disability or may include persons who have expressed an interest in serving on the committee. Applicants must live in the city of Santa Fe and there is no compensation. The term for this position will expire in January 2023 and can then be extended with approval from the Mayor and Governing Body.

The MCD meets on the third Thursday of each month at 10 a.m. Prior to COVID-19 restrictions, the meetings were held at the City Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico. The current venue/format for meetings is a digital ZOOM meeting until such time as they are able to be held in person. The meetings are open to the public.

Interested residents may apply by submitting a letter of interest and a resume to:

Thomas M. Graham
ADA Coordinator
City of Santa Fe, P.O. Box 909
Santa Fe, NM 87504-0909
tmgraham@santafenm.gov
(505) 629-7264

Contacts: Kathlyne Gish, Chair (505) 795-6916, kgishmsw@gmail.com
Thomas M. Graham, ADA Coordinator / Liaison; (505) 629-7264, tmgraham@santafenm.gov

Mayor's Committee on Disability

City of Santa Fe

DRAFT

April 21, 2022

To: Mayor Alan Webber &
City Attorney Erin K. McSherry

Via electronic mail to:

mayor@santafenm.gov

ekmcsherry@santafenm.gov

From: Kathylyne Gish, Chair, Mayor's Committee on Disability

RE: Request for Communication Access Realtime Translation (CART) Captioning at Monthly Mayor's Committee on Disability Meetings

We the City of Santa Fe Mayor's Committee on Disability (MCD), by our authority under **City Resolution 2006-151**, have by unanimous vote request that the City of Santa Fe provide people with disabilities including the MCD with Communication Access Realtime Translation (CART) captioning services at monthly MCD meetings held on the third Thursday of every month from 10AM to 12PM.

Under Title II of the Americans with Disabilities Act (ADA), state and local governments are required to "communicate effectively with people who have communication disabilities." See ADA Title II 28 C.F.R. 35.160 (a)(1). The goal of effective communication under the ADA is to ensure that communication with people with communication disabilities is "equally effective as communication with people without disabilities." Also under the ADA, "covered entities must provide auxiliary aids and services when needed to communicate effectively with people who have communication disabilities." See Department of Justice ADA Requirements Effective Communication.

CART captioning is an auxiliary aid and service under the ADA. See ADA Title II 28 C.F.R. 35.104 (1). Members of the MCD and members of the community have communication disabilities that require CART captioning for effective communication during the MCD's monthly meetings.

Please note that CART captioning is different and often confused with automated captioning. Automated captioning although increasingly popular still remains very inaccurate and often dips below 50% in accuracy depending on the kinds of language and speech used. CART on the other hand is almost always more accurate since it involves a live human stenographer (in-person or remote) to provide transcription services. Additionally, under the ADA a covered entity such as the City of Santa Fe is required to honor the requesters choice of services unless it can prove that an alternative auxiliary aid or service provides communication that is as effective as that provided to individuals without disabilities and affords an equal opportunity to participate in and benefit from the service, program, or activity.

The MCD in collaboration with our liaison ADA Coordinator Tom Graham looks forward to utilizing CART captioning at its next meeting on May 9, 2022.

We thank you Mayor Webber, for your continued support of the MCD, and for making the City of Santa Fe more accessible and inclusive for people in our entire community.

MCD Members:

Kathlyne Gish, Chair
Kendra Garcia, Vice-Chair
Aurore Bleck
Hope Reed
Eli Fresquez
Meriam Jawhar
Victor Hughes
Angelique Montoya-Chavez
Pam J. Parfitt

Cc: Santa Fe City Councilors:

Sign I. Lindell
Renee Villarreal
Michael Garcia
Carol Romero-Wirth
Chris Rivera
Lee Garcia
Jamie Cassutt
Amanda Chavez