

Mayor's Office On Disability/Mayor's Disability Council

Report of the 2000-2001 San Francisco Civil Grand Jury

SUMMARY

The Civil Grand Jury (CGJ) reviewed the Mayor's Office on Disability (MOD) and the Mayor's Disability Council (MDC). The concern for this review was that the City and County of San Francisco was not in compliance with the federal requirements of the Americans with Disabilities Act of 1990 (ADA). Further, coming into compliance is jeopardized by an inconsistent response by the current and previous mayoral administrations.

The main purpose of the MOD is to oversee development and implementation of the self-evaluation and transition plans that will bring San Francisco into compliance with ADA. The main purpose of the MDC is to provide a citizen forum from which recommendations are made to the Mayor to respond to the needs of the disabled. The MOD and MDC were created, in part, as a response to a lawsuit filed against the City and County of San Francisco in 1997, alleging non-compliance with ADA.

The City can be commended for creating and funding the MOD. However, the MOD and MDC have no legal or institutional authority to compel compliance, leaving San Francisco vulnerable to legal action. As of June 2001, no self-evaluation and transition plans have been completed.

The CGJ recommends that:

A permanent Commission on the Disabled be established.

MOD become a permanent department, accountable to the Commission.

MOD complete and publish its self-evaluation/transition plan.

Commissioners serve staggered terms of office.

An adequate number of staff for the Department on the Disabled be civil servants who can accumulate institutional history.

BACKGROUND

"The Nation's proper goals regarding persons with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals."

Americans with Disabilities Act, Section 2, Paragraph (a)(8)

Brief Timeline of Disability Actions

1984: MDC established in response to protest by the disabled community.

1987: Under threat of litigation, the Bureau of Building Inspection completed a survey; approximately 90% of privately owned and recently inspected buildings were not in compliance with California State Building Code's Title 24 access requirements. A proposal for a Disability Access Coordination Program was made to Department of Public Works/Bureau of Building Inspection.

1988: MDC replaced with a Coordinator for Disability Issues. The Bureau of Building Inspection concluded that a Disability Access Coordination Program was needed, and development began.

1989: A coordinator for the Disability Access Coordination Program was hired. Duties included plan inspection, site review, code interpretation, code training, and investigation of complaints.

1990: The Americans with Disabilities Act of 1990 was enacted. A transition plan was required to be completed by January 1992, a self-evaluation plan completed by January 1993, and physical modifications completed by January 1995. A grievance procedure was also required.

1992: MDC was reinstated; Coordinator for Disability Issues remained. The MDC began work on implementation of the ADA. Preparation of department transition plans began.

1997: A lawsuit was filed in federal court against the City and County of San Francisco alleging lack of compliance with ADA requirements.

1998: A newly organized MDC was established. An ADA consultant was hired to conduct self-evaluation plan for ADA compliance; previous transition plans found to be inadequate. Concept of MOD was developed.

1999: The lawsuit filed in 1997 was settled. As part of the settlement, \$18 million was set aside for ADA compliance, to be allocated between fiscal years 1998-2001. San Francisco will hire consultant to complete self-evaluation and transition plans. MOD was established and a director of MOD was appointed.

The Americans With Disabilities Act of 1990

The ADA was signed into law on January 26, 1990, and established the disabled as a federally protected class. The purpose of the ADA was to "provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities" (ADA, Section 2(b)(1)). To accomplish this goal, the ADA required a series of actions be taken to eliminate discrimination in all aspects of employment, to enable access to both public services and to public accommodations and services operated by private entities, and to enable access to telecommunications. The actions required to accomplish the goal included, but are not limited to, equal access to job announcements, transportation access, and access to buildings.

The ADA transition plan was required to be completed by January 26, 1992, the self-evaluation plan was required to be completed by January 26, 1993, and physical modifications identified to be necessary in the transition plan were required to be completed by January 26, 1995.

In 1997 a lawsuit, "ADA Task Force, et. al., vs. the City and County of San Francisco, Case #C97-2438VRW (MEJ)," was filed in Federal court. This lawsuit alleged lack of compliance with the ADA. In settlement of that lawsuit, the MOD and MDC were established in their current form. Neither the MOD nor the MDC exist by legislative enactment. They were created as part of the Mayor's office and serve at his pleasure.

The MDC was vested with an advisory function and is comprised of citizens who work and/or live in the City and County of San Francisco. The mission of MDC is to receive and analyze information regarding disabilities, and make recommendations to the mayor and departments on disability matters.

The mission of the MOD is to provide accessibility to programs, activities, benefits, services, and facilities of the City and County of San Francisco by people with

disabilities, including residents and visitors. One of its first goals was to develop a transition plan to bring San Francisco into ADA compliance.

The Current MOD and MDC

The CGJ reviewed the minutes of the MDC for the past year, attended or viewed broadcasts of MDC meetings, and reviewed the text of the ADA and ADA-related material. We also conducted interviews with representatives of the MOD and MDC, members of the disabled community, and employees of other city departments who bring an awareness of ADA to their work.

The MOD currently employs an executive director, a deputy director, an assistant director, a complaint investigator and two to three support staff. The directors and complaints investigator are special assistants, the others are civil servants.

In May 1999, to meet the compliance requirements of the ADA, the City engaged a contractor to review programmatic, employment and architectural aspects for ADA compliance and develop transition and self-evaluation plans. This contract was to be completed by October 31, 2000. However, this contract was reassigned to another contractor in Fall 2000. As of June 2001, the self-evaluation and transition plans are not completed. MOD management acknowledge that the plans are not yet complete, but note that substantial work has gone into developing these plans (including focus groups and interviews) and they are much better than previous City efforts. MOD management observe that San Francisco is not atypical in its lack of full compliance with ADA requirements; many other cities are in similar stages of compliance.

City departments show signs of ADA compliance. For example, the Community Development Block Grant Program allocated \$400,000.00 in both 1999 and 2000 to the Disability Access Upgrade Pool (city-wide). In 2000, a total of \$251,000.00 was awarded to the San Francisco Housing Authority for accessibility retrofit. New Recreation and Parks facilities receive review for ADA compliance prior to construction.

A detailed budget of the MOD is not available. A portion of the MOD budget is assigned to the Department of Public Works to reconfigure sidewalk intersections to be wheelchair accessible. This was to be completed in 2001. While much work has been done, the minutes of the MDC indicate that completion is now scheduled for 2008. However, its completion is not under the jurisdiction of the MOD.

The ADA requires that a public entity with 50 or more employees develop a grievance procedure and designate an individual to oversee compliance. No formal policy apparently has been put forth regarding how San Francisco complies with this portion of ADA. In most senses, MOD and its director can be considered to be the "individual" that oversees compliance. However, the Department of Human Resources also handles employment-related disability issues. Further, many departments, such as the Police Department or Public Library, have ADA coordinators who resolve disability issues specific to their department.

A random check of the department ADA coordinators roster provided by the MOD to the CGJ revealed the names of individuals who no longer worked for the City, and individuals who did not know they were designated as the department ADA coordinator for their particular department. Interviews with several active coordinators indicate that an up-to-date roster, posted on the City website, would be beneficial, both for

departmental coordinators and for the public. Departmental coordinators would also appreciate more training, and note that a list of expectations for those identified as departmental ADA coordinators would be helpful. These coordinators note that MOD works well as a resolution center for multi-department problems. MOD management notes that MOD is in the process of developing training to be given to ADA coordinators. MOD management agrees that the roster is not up-to-date, but notes that it is hard to keep track of personnel in small departments with high turnover, and also notes that some departments have multiple ADA contacts.

In addition, the MOD receives complaints regarding disability issues from the citizens of San Francisco. MOD management notes they currently receive 40 to 50 complaints per month. Most of these "complaints" are either requests for services or questions regarding affordable, ADA-accessible housing. An issue formally can be a complaint only if a person meeting appropriate criteria is denied service. During our interviews we learned that not all complaints are recorded. A log of complaints and their resolution is, therefore, incomplete. MOD management notes that the current grievance procedure is inadequate and is in the process of developing a new, more complete procedure, which will denote MOD as the "ADA Coordinator" (intended in ADA requirements to be the central receiver of complaints). MOD management expects that the new procedure, once approved, will make MOD authority over proposed disability actions at other City departments more than hortatory. MOD management state that they also intend to upgrade the database.

Established in October 1998, the MDC provides a better vehicle for public input (emphasis that of the CGJ). The MDC meets monthly, and these meetings set the standard for public accessibility with a fully accessible site. MDC and MOD have championed the use of captioning for televised City board and commission meetings.

The MDC has no oversight of the MOD and does not have any jurisdiction to enforce ADA compliance. The MDC was created to provide an advisory function to the mayor. It is staffed by the MOD. The MDC's functioning remains unclear. For example, it was difficult for the CGJ to gain a clear understanding of the terms of office for each member, how each member of the MDC was chosen, what orientation members receive, and how public input forms their advisory function.

FINDINGS

1. No self-evaluation and transition plans are completed and in place for ADA compliance.
2. Because it serves an advisory function, the MOD has no legislative authority to enforce ADA compliance. While its mission is clear, its jurisdiction is limited. There is no controlling body to oversee enforcement of ADA compliance.
3. A majority of the MOD staff are special assistants. Because special assistants serve at the pleasure of the mayor, there is no guarantee that they will continue beyond the current administration.
4. The MDC has no oversight of the MOD and its staff. Therefore, the MDC is restricted to a forum of public comment and resource referral.
5. Without a centralized mechanism through which ADA compliance is monitored, San Francisco remains vulnerable to further legal action.

6. The ADA coordinators roster for city departments is incomplete. Departmental ADA coordinators would appreciate more training and a list of expectations.

7. The MOD complaint log is incomplete.

8. The current MOD complaint procedure is inadequate.

RECOMMENDATIONS

1. The CGJ recommends that the MOD complete and publish the self-evaluation and transition plans.

Required Response

Mayor's Office on Disability - 60 Days

2. The CGJ recommends that a permanent Commission on the Disabled be established with the authority to oversee full and complete compliance with the ADA and to attend to the continuing maintenance and improvement of such compliance to meet the needs of the disabled.

Required Response

Mayor - 60 Days

Board of Supervisors - 90 Days

3. The CGJ recommends that the Mayor's Office on Disability be converted to a permanent department and be accountable to the Commission.

Required Response

Mayor - 60 Days

Board of Supervisors - 90 Days

4. The CGJ recommends that the Commissioners serve staggered terms of office.

Required Response

Mayor - 60 Days

Board of Supervisors - 90 Days

5. The CGJ recommends that a method be developed to ensure departmental history across mayoral administrations.

Required Response

Mayor - 60 Days

Board of Supervisors - 90 Days

Mayor's Office on Disability - 60 Days

6. The CGJ recommends that a complete roster of ADA representatives in city departments be developed and published on the MOD website.

Required Response

Mayor's Office on Disability - 60 Days

7. The CGJ recommends that training and a list of expectations for ADA department coordinators be provided.

Required Response

Mayor's Office on Disability - 60 Days

8. The CGJ recommends that a complete complaint log be maintained.

Required Response

Mayor's Office on Disability - 60 Days

9. The CGJ recommends that a new MOD complaint procedure be finalized.

Required Response

Mayor's Office on Disability - 60 Days