

ACCESSIBILITY ADVISORY COMMITTEE MINUTES
8th Floor Community Development Conference Room, City Hall
Thursday, May 7, 2009
2:00 P.M.

The City Accessibility Advisory Committee met at the above place and date. The meeting was called to order at 2:07 P.M. The following committee members and staff answered roll call:

Arne Schonberger	Rafael Hernando III
Martin Walton	Mary Castillo
Mark Shoemith	William Bennett
James W. Peterson	Joe Stiles

The following visitors were present:

Tom Bohannon	Eric Zuloaga
Kristin Sizemore	Jane Shang
Luis Chew	

The following members and staff were not present:

Richard Sheldon	Rene Jamis
Willie Padilla	Santos Gutierrez Jr.
Manny Razo	Jim Fraser
Sgt. Jack Mathews	Andrea Espinosa
Sergio Reyes	

AGENDA

I. WELCOME / ROLL CALL

II. CALL TO THE PUBLIC – PUBLIC COMMENT

This time is reserved for members of the public who would like to address the City Accessibility Advisory Committee on any items that are not on the City Accessibility Advisory Committee Agenda and that are within the jurisdiction of the City Accessibility Advisory Committee. No action shall be taken.

III. APPROVAL OF MINUTES OF March 26, 2009.

IV. DISCUSSION AND ACTION

- A. Discussion and action on an ordinance amending Title 18 (Building and Construction), Chapter 18.08 (Building Code), Section 18.08.170 (Accessibility for people with physical disabilities) of the El Paso City Code by deleting the prior adoption of Sections 5 through 13 of the Texas Accessibility Standards; deleting the City of El Paso amendments to the Texas Accessibility Standards, Sections 4.1.3 (5) through 13.4.1; amending the International Building Code, Chapter 11, Section 1101; deleting the City of El Paso amendments to the International Building Code, Chapter 11, Sections 1102 through 1114; the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.
- B. Create Subcommittee to review proposed ordinance amendment of Title 18, Section 18.08.170 of the El Paso City Code.

Item 1. Welcome/Roll Call

Roll call was taken and a quorum was confirmed.

Item 2. Call to the Public - Public Comment

There was no Public Comment.

Item 3. Approval of Minutes of March 26, 2009.

A motion was made by Raphael Hernando III, seconded by Martin Walton, and unanimously approved to approve the minutes of March 26, 2009.

AYES: Arne Schonberger, Rafael Hernando III, Martin Walton, and Mary Castillo.

NAYS: None.

ABSTAIN: None.

Item 3. Discussion and Action

A & B. Comments were made by Arne Schonberger, Rafael Hernando III, Martin Walton, Mary Castillo, Mark Shoesmith, William Bennett, Joe Stiles, Tom Bohannon, Eric Zuloaga, Kristin Sizemore, and Luis Chew.

A motion was made by Arne Schonberger, seconded by Mary Castillo, and unanimously approved to set up a subcommittee to review the proposed amendments to the Building Code.

AYES: Arne Schonberger, Rafael Hernando III, Martin Walton, and Mary Castillo.

NAYS: None.

ABSTAIN: None.

Item 5. Adjournment

A motion was made by Rafael Hernando III, seconded by Martin Walton and unanimously approved to adjourn the meeting at 3:17 p.m.

AYES: Arne Schonberger, Rafael Hernando III, Martin Walton, and Mary Castillo.

NAYS: None.

ABSTAIN: None.

ACCESSIBILITY ADVISORY COMMITTEE MEETING MINUTES
8th Floor Community Development Conference Room, City Hall
Thursday, May 7, 2009
2:00 P.M.

The City Accessibility Advisory Committee met at the above place and date. The meeting was called to order at 2:05 P.M. The following committee members and staff answered roll call:

Arne Schonberger	Rafael Hernando III
Martin Walton	Mary Castillo
Mark Shoosmith	William Bennett
James W. Peterson	Joe Stiles

The following visitors were present:

Tom Bohannon	Eric Zuloaga
Jane Shang	Kristin Sizemore
Luis Chew	

The following members and staff were not present:

Richard Sheldon	Rene Jamis
Willie Padilla	Santos Gutierrez Jr.
Manny Razo	Jim Fraser
Sgt. Jack Mathews	Andrea Espinosa
Sergio Reyes	

AGENDA

I. WELCOME / ROLL CALL

II. CALL TO THE PUBLIC – PUBLIC COMMENT

This time is reserved for members of the public who would like to address the City Accessibility Advisory Committee on any items that are not on the City Accessibility Advisory Committee Agenda and that are within the jurisdiction of the City Accessibility Advisory Committee. No action shall be taken.

III. APPROVAL OF MINUTES OF March 26, 2009.

IV. DISCUSSION AND ACTION

- A. Discussion and action on an ordinance amending Title 18 (Building and Construction), Chapter 18.08 (Building Code), Section 18.08.170 (Accessibility for people with physical disabilities) of the El Paso City Code by deleting the prior adoption of Sections 5 through 13 of the Texas Accessibility Standards; deleting the City of El Paso amendments to the Texas Accessibility Standards, Sections 4.1.3 (5) through 13.4.1; amending the International Building Code, Chapter 11, Section 1101; deleting the City of El Paso amendments to the International Building Code, Chapter 11, Sections 1102 through 1114; the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.
- B. Create Subcommittee to review proposed ordinance amendment of Title 18, Section 18.08.170 of the El Paso City Code.

Item 1. Welcome/Roll Call

Roll call was taken and a quorum was confirmed.

Item 2. Call to the Public – Public Comment

There was no Public Comment.

Item 3. Approval of Minutes of March 26, 2009.

A motion was made, seconded, and unanimously approved to approve the minutes of March 26, 2009.

Item 4. Discussion and Action

- A. Discussion and action on an ordinance amending Title 18 (Building and Construction), Chapter 18.08 (Building Code), Section 18.08.170 (Accessibility for people with physical disabilities) of the El Paso City Code by deleting the prior adoption of Sections 5 through 13 of the Texas Accessibility Standards; deleting the City of El Paso amendments to the Texas Accessibility Standards, Sections 4.1.3 (5) through 13.4.1; amending the International Building Code, Chapter 11, Section 1101; deleting the City of El Paso amendments to the International Building Code, Chapter 11, Sections 1102 through 1114; the penalty being as provided in Section 18.02.107 (Violations and Penalties) of the El Paso City Code.
- & B. Create Subcommittee to review proposed ordinance amendment of Title 18, Section 18.08.170 of the El Paso City Code.

This is the same item as was talked about at the last session. There is a summary of the points that were amended. The Texas Accessibility Standards (TAS) is being included because work areas are included. TAS does include work areas, but all that is required is that a person be able to enter maneuver and exit. In the ordinance that was passed in 1987, work areas were required to be accessible so that individuals could obtain employment. The person could actually perform work in the area other than just entering, maneuvering, and exiting. The question was asked, "Does the City think that is adequate?" The other thing is that businesses must provide accommodation. If they don't hire a person in a wheel chair, it could be possible grounds for suing the company. Making the work areas accessible was discussed and it was thought that it was going to be added back into the proposed ordinance. On the front page it includes work areas. It is not like the original ordinance. The original ordinance read "every building or structure shall have all levels and areas, including employee work areas, made accessible to the physically handicapped in accordance with ANSI or its successor. TAS does not require work areas to be accessible, it just has to be able to be entered, maneuvered in, and exited. The wording will be changed to have work areas accessible. The idea is to have persons with disabilities be able to get employment. People with disabilities tend to be unemployed at much higher rates. They cannot get employment if the work area is not accessible. The work area is one of the reasons to provide full access. Universal should be kept in the code so that it is understood that the area is fully accessible. The city will put the word universal back in the code. There are other areas that are important and should be looked at point by point. That is why a subcommittee should be set up. The Accessibility Advisory Committee would rather keep the ordinance as it is. The argument for not keeping the ordinance like as it is, is not seen. One of the reasons is that we are using TAS, so an ordinance that has TAS, TAS, TAS is not needed because the City is using TAS. One of the reasons for not using TAS is the work area section and there are possibly other areas that do not cover accessibility. Another reason for not using TAS is that it allows for exceptions, where as our City Code did not. In the past, our City Code did have exceptions and 4every time a builder, architect, or anybody asked for an exception, they got it. It was the Building Board of Appeals at the time. They got their exception every time. Nothing was made accessible for many years. Taking out the exception part was very important also. The TAS has exceptions and from what is understood they grant exceptions freely. So to use the TAS that includes exceptions could be a problem. TDLR does not hand out exceptions freely. A very firm reason for not being able to comply is required to get an exception. One of the areas where an exception would be granted is for construction on steep slopes or terrain. A waiver was received for (curb ramps) and the museum got a waver so that they would not have to install an elevator to a projection booth. They got the waiver to have a lift to access the area. A waiver was received to install truncated domes on curb ramps for two feet of the ramp by the width of the ramp instead of having the full length and width of the ramp having the detectable warnings. This was granted because this is the way the ADA Accessibility Guidelines are going. Very rarely have there been exceptions granted especially in new construction or where the construction was done wrong. It seems like the argument to change the standards was for multi family housing and it got expanded to changing access in other areas. Maybe the rest of the ordinance should not be touched and that only the multi family portion should be addressed. Why would the rest of the ordinance need to be changed? Part of the reason is to

eliminate duplicity. There is a lot of TAS and Chapter 11 that says the same thing. An example, if you take a section from Chapter 11 and look at the local amendments it will be found that they are the same. Rather than amend Chapter 11, leave Chapter 11 as it is and only amend the items that need to be changed. The way that the ordinance is now is very confusing for enforcement. If there is a standard, with a few local amendments, for example the work areas, enforcement will be easier. Another thing that is the same is that primary entrances shall be located on an accessible route. The "City of El Paso response to Fort Bliss Expansion – Multi Family Housing Needs" was handed. Mr. Torres has said that there are no multi family housing units under construction. There are plans in for 18 condominiums. There are some apartments being constructed right now on George Dieter. Is it the position of the builders of multi family housing that because three percent more accessible apartments, that the other 97 percent are not going to be built? What is happening with the new fees being passed, with the credit crunch, the lack of available loan money and equity money, and the lack of people willing to take a risk, that in spite of the soldiers coming in, it is very difficult to get a new project done. The projects being built now were started and got loans before the credit crunch. Now projects have been started under the current economic conditions. The City went to Mr. Bohannon asking for ideas to stimulate apartment growth and that the city might be willing to give some fees back to help stimulate the growth. One of thing that was pointed out, is that the El Paso building code requires 250 percent more Type A units than the standard codes require. The units have been being built for the last 16 years, but people cannot rent the accessible units. It is thought that by showing the statistics, that maybe we do not need as many accessible units. It becomes another penalty that the developers pay for financially. These projects are so complicated, so risky, so many factors involved, that to say only one item is causing the problem would not be accurate. It is a bundle of things that are having a negative impact. The City is looking at what can be done and to find the issues that will allow the developers to take reasonable risks. The number of accessible units that are required is one of the issues. The list that has been handed out is a list of items that need to be addressed so that apartment units will start being built. In the next two years will be a shortage of about 8,000 apartment units. If the stimulus is not there to build the apartments, what is going to happen is that what are now relatively affordable apartments, will become expensive, and people will not be able to pay for them and because of this, people will be thrown out of the apartments and end up living on the street. This is because of BRAC. Percentage wise how many soldiers are coming and how many will need the accessible units? There is not a definite answer to the question. Every ground floor unit is accessible. There are Type A units and Type B units. All the ground floor units have wide doors and turnaround areas in the kitchens and bathrooms. In the building code, two percent are fully accessible, the grab bars are already installed and it is open under the cabinets and counters. What is happening if the disabled community does not rent the accessible units, it makes it hard on the apartment owners because the unit is very difficult to rent. All of the units can be retrofitted by adding grab bars when needed and opening up under the counters. The units are not more expensive to build. Where it hurts the developers is if the unit cannot be rented or if no one wants the accessible unit. Photos of the difference between a Type B adaptable unit and a Type A accessible unit was handed out. The Type A unit loses storage space because under the sink and lavatory are open. The closet is smaller to accommodate the 36 inch grab bar which only needs to be 24 inches under the building code. The developers would be more than willing to build the accessible units if they were being rented out. If the units cannot be rented or if they are rented out at a substantially lower rate, it affects the income and the banks will not loan as much money to construct new apartments. If the true percentage of the apartments that are accessible and the others are adaptable the time frame to adapt the apartment would not be very long. The conversion should not take over two weeks. Most of the apartments being built are two stories, so 50 percent of the units would be adaptable and two percent of the units would be fully accessible. There are places that charge to adapt the apartment, but Bohannon Development does not charge anything to adapt the apartment. The work could be done in a reasonable time and for no cost. The disabled customers stay longer and are typically better customers. It took 20 years to get here and going back a even a little is difficult. The housing built in the 60's and 70's could not be used and was very expensive to adapt. Now it does not cost to do the work if

it is done in advance. Mr. Bohannon related some of the experiences that he had in his past. If the ordinance is working why change it? (Duplicity) Possibly lost income could be reduced by coming up with better ideas. Some of the costs for the apartments are too high for individuals. Information was presented about looking for an apartment and how hard it was to find an accessible unit. There seemed to be a shortage of accessible apartments. Another case was presented where the individual spent over a month looking for an accessible unit and even though being told a unit was accessible, when she went to move in she found that it was not really accessible. Some of the apartments were built before the rules were passed. Marketing the units might also help in keeping the units occupied. All of the new projects should have followed the ordinance and have accessible units. It looks like it is the accessible units that are having a hard time being rented, the ones that look like hospital rooms. There have been a few cases where people have had made the changes, but it was very expensive and then they have to pay to change it back to how the apartment was originally. The dialogue that is occurring is great because it has never happened before. If the code said that the adaptable units would be adapted at the developers cost, would it be acceptable? Two things are occurring. One is that one developer may follow the rules, but there will always be one developer that will ruin it for everyone. The other thing is that many of the units are not affordable for persons on a fixed income. Possibly there could be a way to make the unit affordable. Part of the reason is that a certain portion may be accessible is that, if federal funds are used to construct the apartments, then five percent of the units are required to be accessible. The grant subsidized terms requires that five percent of the units be accessible. The issue is that the materials cost the same amount, but if the unit cannot be rented out without a government subsidy the apartment will stay vacant. Mr. Bohannon stated that he should be building the most apartments that he has ever built at this time, but he is having a very difficult time doing so. With the new soldiers, they should be building a lot of apartments. Another point that was made was that the soldiers come in and buy a house and are shipped overseas and the government pays the monthly mortgage and when they come back they sell the house for the equity. The officials at Fort Bliss figure that the bulk of the troops coming into the base will be renters. Purchasing a home is becoming more difficult and there will be a greater need for apartments. Metro Study does studies about housing starts all over the country. One of the things they said was that for years it was a given that it was the American Dream to be a homeowner. That is gone now with the housing bubble burst, with people losing equity, and the prices of homes not always going up. The new American Dream is to get out of debt. If a soldier is deployed, apartment owners do not get rent payments for a year. It is the same with the Housing Authority. They will only pay 80% of what they think is reasonable. They have a cap on what they will pay for a one bedroom unit, a two bedroom unit, etc. People have come in the past, but Section 8 will not pay the rent asked for. The people cannot afford the modifications done in the units. So the adaptable apartments are not being built. They have to build the adaptable units because of the code requirements. They are not building them because it is not cost effective. This is known because when a person goes to a unit they find a ramp that goes up six inches in six inches, which is almost straight up. Maybe if the adaptable apartments are not being built, it may be a problem with enforcement and instead of forcing the person who is doing it right to build the extra units for the ones that are not doing it right. The inspectors will need to check more thoroughly. Another problem is with the third party inspectors who are not following the rules. Building Permits is doing review from the third party inspectors. There were some sidewalks that were way off (on slopes) and Building Permits is trying to make them correct the errors. Some of the third party inspectors are no longer in business, because they did not do the job properly. There are some apartments being built by Bohannon Development competitors that use third party inspectors and they are not being built according to the rules. Increasing the number of units that need to be built, will not remove the fact that the units are not being built properly. Advertising was brought up at the last meeting. Advertising is being done in the Apartment Guide or Apartment Finder. Bohannon Development uses the symbol of accessibility to show that there are accessible units. It was suggested to use a person in a wheel chair, but they are not allowed to use live models. If there were a way to make the units more adaptable, maybe they would be easier to rent. The only real expense would be to change a tub to a roll in shower, but this could not really be done (because the tub and shower have different

installation requirements.) Why do the apartment owners require the tenants to pay to adapt the apartment, if it is not that expensive? The law requires that reasonable accommodation be made, but it can be done at the tenant's expense. Bohannon Development does not charge for making the accommodation, but they could. People come all the time but do not want the Type A, accessible unit. Going back to one point, that if the ordinance is changed to two percent, and there are still buildings that are not being built properly, there will be even less accessible apartments. If all of the developers are building accessible units which meet the requirements all that would be needed is two percent of the units, not 250 times what is needed. There should be enough accessible units if the required number of units that are constructed is enforced on all of the developers, not just the ones doing it properly. When there is a regulation and changes are done there will be someone that will want to change it to one percent of accessible units. This would and could not happen because the state and federal laws and codes have established the two percent as a proven standard. It is believed that Victor Torres has the power to reduce the number of accessible units for the project to two percent under the administrative code. This belief is not correct. The biggest problem is that the units cannot be rented. A list of accessible apartments from the different apartment complexes should be compiled so that the community can be made aware of the unit locations. The biggest problem is that the units cannot be rented. If there was a way to rent the accessible units, the problem would go away. Possibly a new survey could be sent out to determine which apartments complexes have accessible units. Susan Leech from the UTEP School of Nursing sent out a survey to determine the number of accessible apartments. The survey did not give a complete number of apartments because many of the surveys were not returned and the results of the surveys that were received is not known. One other item in the code when doing five percent, the broad spectrum is required. That is five percent of one bedroom, five percent of two bedrooms, and five percent of three bedrooms have to be done. The bigger units are more expensive. More units of the more affordable units must be done. If they could be more easily adaptable then there would not be as big a problem in reducing the number of accessible units. Then when someone comes to the apartment, it could be adapted at the apartments cost. A problem with the roll-in shower is that the water comes out on the floor. A way to keep the water in the showers is by using a T-channel. Another suggestion is to put a drop lip into the shower instead of elevating the lip. A shower, that was recently inspected, had the floor raised 2 inches and a ramp that was made to get in the shower had a 20 percent slope. If they had left the shower flat and installed a small threshold the water would not come out of the shower and a wheel chair could easily enter the shower. The standards are made for most situations. A motion was made to set up a subcommittee with members of the committee and experts from the field to review the changes and possibly make other recommendations. One idea would be to compare how the proposed ordinance has been modified and is requiring all of the units on the first floor to be adaptable, and two percent of the units to have roll in showers. This requirement for the roll in showers was added back in to the proposed ordinance. The rest of the ground floor units are required to be adaptable. One of the suggestions is that the all the adaptable units be done at the cost of the owner when the unit is required to be adapted. A list of the reasonable adaptable items could be created. That way the developers would not be required to do items that would be unreasonable. The question was asked why there are on apartments that are affordable? Part of the reason is that because of the building boom at Ft. Bliss, the cost of construction materials has increased. A lot of people who are getting older will have social security and a retirement and will be able to afford the units. Another way to get the work out about the accessible units is to put in on Felix Rey's website at FelixLopezIII@yahoo.com. A motion had been made, it was seconded to set up a subcommittee, and it was unanimously approved. What has been handed out is a list of items that is intended to assist the developers so that they can build more apartments. If there are violations call the ADA coordinator so that it can be investigated and corrected.

Item 5. Adjournment

A motion was made, seconded, and unanimously approved to adjourn the meeting at 3:17 p.m.