

ACCESSIBILITY ADVISORY COMMITTEE MINUTES  
4th Floor Engineering Conference Room, City Hall  
Thursday, September 3, 2009  
2:00 P.M.

The City Accessibility Advisory Committee met at the above place and date. The meeting was called to order at 2:10 P.M. The following committee members and staff answered roll call:

Arne Schonberger	Olivia Chavez
Rafael Hernando III	Martin Walton
Mark Shoemith	William Bennett
Jim Fraser	James W. Peterson

The following visitors were present:

John Eager	Javier Reyes
Eric Reed (Via Teleconference)	Daniel Lopez

The following members and staff were not present:

Richard Sheldon	Manny Razo
Mary Castillo	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. DISCUSSION AND ACTION  
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.

Item 1. WELCOME / ROLL CALL

Roll call was taken and a quorum was confirmed.

Item 2. CALL TO THE PUBLIC – PUBLIC COMMENT

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No public comment was made.

Item 3. 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. Comments about the proposed ordinance were made by Arne Schonberger, Olivia Chavez, Rafael Hernando III, Martin Walton, Mark Shoemith, William

Bennett, Jim Fraser, James W. Peterson, John Eager, Eric Reed (Via Teleconference), and Daniel Lopez.

A motion was made by Martin Walton, Seconded by Rafael Hernando, and unanimously approved for Arne Schonberger to make the presentation to City Council.

AYES: Arne Schonberger, Olivia Chavez, Rafael Hernando III, Martin Walton

NAYS: None.

Abstain: None.

A motion was made by Olivia Chavez, seconded by Rafael Hernando, and unanimously approved to adjourn the meeting at 3:50 p.m.

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Item 1. Welcome/Roll

Roll call was taken and a quorum was confirmed.

Item 2. Public Comment.

No public comment was made.

Item 3. 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.

The public hearing is coming up on Tuesday (September 8, 2009). The advisory committee needs to provide a recommendation with a good reason behind the recommendation. Some of the items have been discussed that need to be presented to city council. Items that were not brought up before are the number of individuals in the state of Texas that have disabilities or individuals with disabilities in other locations (states). The spin that the developers have given the newspapers is that it is all about people in wheel chairs that are supposed to be using the five percent. They are just a

small part of the percentage of physically disabled as defined by the ADA and under this report. They use the word wheelchair throughout and base their whole support on people in wheel chairs. How is it known that the 17 people identified as able bodied people in Bohannon's apartments, did not have a disability? The answer is that it is not known if they have a disability or not and they are not required to disclose whether or not they have a disability. Wheelchairs may be the public face of disabilities and may be the reason dimensions are used to get around corners. Wheelchair users are a small portion of the over all physical disabilities that the regulations were set for. The types of disability that would be most prevalent is for someone that would need a shower stall instead of a bathtub. That would be older or elderly individuals. Go to any supermarket and you cannot find any disabled parking spaces and you go inside and you find only one person who brought his chair. Everyone else is using walkers, canes or moving very slowly. The people on City Council are not aware of people with disabilities for some reason. So when they say, well if it isn't people in wheelchairs then who is it? It is people with arthritis, older Americans, people with heart conditions, hip replacements, knee replacements, and on. It is anyone that has a condition that substantially limits one or more basic physical activities such as walking, climbing stairs, reaching, lifting, etc. Have to give them something that will give them a picture in their mind, like a person with a knee replacement cannot step into a tub. People who have had strokes, mild or otherwise, that limit there activity. Other items that limit a persons activity is Parkinson's, people recovering from cancer, pulmonary problems, or anything that can affect coordination. The way that the ADA looks at mobility impairments, is a wide range of areas. Because accessible parking it is designated with a wheel chair symbol, accessible bathrooms use the wheel chair symbol, the wheel chair has become the prominent feature that people recognize as to being disabled. What needs to be emphasized to council is that disabilities fall into a wide gamut of areas. One that was brought up, cancer patients, might be a temporary or long term situation. It is not just one thing, it is a number of things. People with heart problems was mentioned, other situations are people with blood clots, stroke victim, and many other conditions that are not visible disabilities, and would or could not be determined and would not have to be disclosed. One thing is individuals that have back problems, cannot use a bath tub, and it is something that would not be seen, typically. What should also be done is to define what a mobility impairment is. The presentation should be done chronologically and establish the reasoning behind why the five percent was originally established. Mr. Peterson saw Ed Elsey (former Mayor pro tem) last weekend and from what he remembered is that the reason five percent was established is because the builders were building apartments without any accessible units. The five percent was to make up for multifamily housing that was built during the two percent time when zero percent was actually being built. Council might need to know why the five percent came about and since that time the need and the availability of the accessible units. In 1996, a survey was done and it was proven that the units that were being built did not meet the requirements for accessible units. There was an ordinance 11477 signed in 1993 by Larry Francis, the City required the apartment builders to have one accessible unit for anything over four units up to 10 units, and two accessible units for 11 to 20 units and over 20 apartments five percent were required. The smaller apartment builders are not objecting to constructing the accessible apartments. It is the larger developers. They are trying to use the Fort Bliss issue to try to get as many incentives as possible. Storm water reduction was a large break. A law was passed in Texas regarding education that has to do with transition. Young people are taught to live independently as much as possible. Many of the individuals have physical impairments, of one kind or another, that will need to have the accessible apartments. A lot of people also come to El Paso to retire and a lot of people in the military come back to El Paso because of the climate. They have been

coming here for years and they are not renting new apartments, or they are not using wheel chairs so they do not realize that they need the accessible apartment. How many kids with disabilities might need the accessible type apartment? Olivia Chavez is going to get the information from the Special Ed Director (at Region XIX) who has the stats. They get vocational rehab money to pay for rent if they are going to school. DARS has paid up to half of the rent. The fundamental question is has the demand been met or is there an abundance of accessible units? The answer seems to be no. The only way to show that there is the need for the units. The study by Cornell University shows that there are approximately 18.6 percent of individuals that have mobility disabilities. If that number is put into the number of military families that are coming in here, it can be figured that about 18 percent of those families will have a disability. What needs to be addressed is that the standards that were set by the original ordinance and with what is occurring in history of El Paso the need is increasing even more. Now would be the worst time to decrease the number of units. How would you answer the question with the number of people in El Paso with mobility disabilities, how come they are not renting the accessible apartments, according to the developers? It seems that only one developer is providing the information and the other developers are not providing information. It is thought that it is one or no more than a few developers that want to change the number of units. The individual that is requesting the reduction has plans to build a complex and is just waiting to see how much he can get from the city before he pulls his permits. What needs to be pointed out is that individuals that use wheel chairs may not be renting out the apartments, but other individuals also need the accessible apartments. All of the talk has been geared to individuals that use wheel chairs. A lot of times the individuals have hidden disabilities, and for the developer to say that the individual does not have a disability based on appearance is not accurate. If he asks the individual if he has a disability he would be breaking the law. It does not cost the developers anything significant to build the accessible units according to Mr. Bohannon. He said he pays for any changes that are made. He said he would pay for any changes. He could also charge to return the apartment to the way it was originally. He told council that he does not give a discount to individuals, that there must have been a miscommunication, but he told the paper that in order to rent out the unit he had to give discounts to individuals to move in. I have his recording from the legislative review committee where he said he does not give discounts. Mr. Bohannon has 50 accessible apartments, but only one is occupied by an individual that uses a wheel chair user. There is no real issue, because the other units are rented. He is saying that people with disabilities are not coming to rent the apartments, but when somebody with a disability calls the apartments are full. He doesn't say that he will make a waiting list for you. At one point he said that they make a waiting list, but Mike Ahumada called every one of the apartments and no one said they would put him on a waiting list. John Eager and Mike went to the Point together and they said that there are no apartments available. The point was constructed before 1991, but they have apartments that have wide doors, but there are a lot of terrain problems. It is very difficult to get them to make the units accessible if they were built before 1991, because it is not required unless federal funds are used. That brings up another issue, what accessibility requirements for federally funded or assisted housing assistant need to be in compliance with Section 504? Federally assisted, new construction housing requires five percent of the dwelling units or at least one unit whichever is greater to meet UFAS (Uniformed Federal Accessibility Standards) or a standard the is equivalent or stricter that is explained in the question and answer above this one for persons with mobility disabilities. This is where the five percent comes from. An additional two percent of all dwelling units or at least one dwelling unit, whichever is greater, must be accessible for individuals with hearing or visual disabilities. The primary driver that they have is that this is for Fort Bliss soldiers coming in. They are being paid with federal dollars. It is

basically becoming a federally assisted type of housing, if you want to argue discrimination. It is a stretch. They have made it a point that they are trying to attract federal dollars. It is not as much of a stretch as saying that, the city gets federal money in block grant, millions and millions of dollars, and then gives a tax rebate to this developer, of two million dollars. They couldn't afford to give that money to Volar to do the survey. They put the burden on us to prove that the accessible apartments are needed. The burden should be the other way. The burden should be to them to show the statistics that there is no need for the apartments. Why should we have to show that there is a need? With the law as it is, they want to change it. It has been working for 20 years. He has no need (for accessible apartments), not that El Paso does not have a need. Something that came up was when doing the tax break, parkland break, storm water break, does it constitute some sort of donation from a government agency? This was brought up last time. The way they are doing it is, that they still have to pay tax, but a rebate will be given. That becomes a housing program being funded by public dollars. Under ordinance 9779, the definition of financial assistance means a grant or other arrangement whereby the city provides assistance in the form of funds, services of city personnel, real or personal property, or any interest in or use of such property, including transfers of leases of such property for less than fair market value or for reduced consideration. If someone is getting funds from the city or benefits from the city they must comply with the ordinance. You go back to the Civil Rights restoration act of 1987, Federal Highway Administration programs, which regulates the city, nondiscrimination programs require that federal aide recipients, sub recipients, and contractors prevent discrimination and insure nondiscrimination in all of their programs and activities, whether those programs or activities are federally funded or not. Under this the city is required to prohibit discrimination whether they receive federal funds or not. By requiring two percent under the building code verses five percent local ordinance that has been required, would that be forming a basis for discrimination? The city has not proven that there is adequate housing for people with disabilities. There is no current independent study showing this. That is the key point right there. There is no proven argument that there is not. The 18,000 people with disabilities have to be living somewhere. They only have five examples. Four Bohannon and one the other guy (Ray Baca), out of all the apartment owners that are in town. They have gone to additional apartments since the last meeting. Luis Chew was able to visit one of Bohannon's properties. Photographs of the apartment were passed around. One shows the bathroom. One shows the kitchen where one half of the counter is higher than the other. This is not a violation. The next one is a pantry door and they need 18 inches on the pull side. Type A units can have the cabinet in place, however they must be able to be removed without removing the sink. ANSI allows the cabinet front to be there, but it must be able to be removed and the flooring and wall underneath must be finished. If the sink has to be removed, then it would not be permitted. The main area to the apartment does not have to have the maneuvering area. The kitchen and bathroom both have the maneuvering area. The kitchen shown appears not to be wide enough, but it is permitted under ANSI, the building code and Fair Housing guidelines. A picture showing a roll in shower with an enclosure in a Bohannon apartment has a lip and is not accessible. He is claiming that the enclosure (door) can be easily removed. ANSI does not say whether that type of situation would be allowed. The switches are at 48 inches for a forward reach or 54 inches for a side reach. The Type A units have the grab bars installed. The photo shows the kitchen to be about 40 inches wide. There has to be a turn radius. The turning radius is 60 inches, but if it is a galley kitchen (u shaped) with counters, appliances, or cabinets on three continuous sides, clearance between all opposing base cabinets shall be 60 inches. There is a situation where you can have 40 inches minimum. Minimum clearance under ANSI is 40 inches, in Type A units. That will not give a 5 foot turnaround, but it is allowed in ANSI. That

is what the photo shows. ADA regulations do not apply to apartments. Fair Housing Guidelines come from the ANSI standards. If a door is put in like is shown, then they have to have the clearance. The door is a violation and they are going to be cited for that (given a correction notice to correct.) They are going to remove the door. This complex is relatively new, built in 1997. The review of the clubhouse, office, and common areas was done by Harry Manley in 1997. That goes back to the statement that Bohannon made that they are punishing him because he is a good builder because the bad builders do not build the units properly. It is not one person's law, the law is for everyone. California requires four percent statewide and there are some cities that require up to ten percent of the units to be accessible, because they have a lot of retired people like El Paso. New York State is four percent. Chicago is ten percent. Mr. Bohannon is saying he is doing the city a favor to build any apartments at all. The paper that Mr. Peterson handed out from the BRAC pretty much shows that El Paso has all the housing that it needs. Are there developers from out of state looking at El Paso? There was a call this morning who works for a large construction company, and he said that they would build apartments. Mr. Baca indicated that all of his ground floor units are Type A units, but he has not had any requests for the units. His profit margins that he discussed were pretty much bogus. One of the important things is to show the numbers of individuals and the percentage of individuals in El Paso with mobility disabilities. The percentage of individuals in El Paso is 7.9 percent. That is between 15 years of age to 64 years of age. That is individuals with a physical disability. That does not mean that the person is necessarily in a wheel chair. A portion of the units should be set up for persons with other disabilities, or make reasonable accommodation for other types of disabilities. The lack of advertising is Mr. Bohannon's biggest problem. He understanding of how to market his product is his problem. He admitted that it could be the problem and he took notes, but has not done anything to market the apartments in over three months since it was originally brought up. The rest of the stuff is marketed very well. Another thing that needs to be shown is that in El Paso we have a higher demand for apartments. A comparison of the percentages of individuals with mobility disabilities in different cities, such as Dallas, Houston, San Antonio, Austin, needs to be presented. Instead of changing the numbers permanently, like is being talked about now, which would reduce the number of accessible units for many years because more apartments will not be built after this 8,000 units, he builds these apartments and it is shown that he has made every effort to market the units, that he has to wait till last to rent the accessible units, then we can look at whether the number of units needs to be reduced. Only 28% of individuals with disabilities are in poverty, 72 % are not. It will be tough because of the economy and having houses available. There should not be a problem with the grandparents coming to watch the kids and they are going to need the apartments. The key is to say we will look at it then. The military is giving bigger housing allowances now. Mr. Peterson took Loop 375 to the east side and there is massive housing on east Fort Bliss, what used to be Bigg's Field, that is empty. There is housing that has been built on the south end of Fort Bliss, that is probably ready for occupancy. Fort Bliss has built a lot of housing and there is plenty of it vacant. The El Paso Times web site, under apartments, when the wheel chair access box is clicked, a lot of apartments come up. So there is a form of advertising out there for accessible housing. One of the other things that needs to be done, is to get away from the wheel chair and start showing elderly individuals. They have seen a lot of the wheel chairs, but wheel chair users are a small part of the population with physical disabilities. Here are the rest of the people with disabilities. The presentation is being presented by the advisory committee and the person giving the presentation has to be a member of the committee. Whoever is chosen to do the presentation, it doesn't matter if they have a disability or not. They are the one's appointed by council to advise them. Usually it is the chair or someone that the chairman

designates. It is going to be hard to get the presentation together and go over it for the council meeting on Tuesday. A motion was made, seconded and unanimously approved to have Arne Schonberger make the presentation to City Council. The time allowed at council is for public comment. The advisory committee recommendation to the council is not public comment. Some of the ads in the paper when they are talking about community amenities, they mention wheel chair access. It appears that they are talking about the areas around the apartments and not the apartments. As far as advertising, it does not say the apartments are accessible, but it does say that it has a fire place. The international building code is using ANSI 117 along with the ADAAG, UFAS, and TAS. All of the Type A units are required to have roll in showers. At one time only 50 percent of the Type A units were required to have roll in showers. The current ordinance and the proposed ordinance requires that all Type A units have roll in showers. The current ordinance requiring roll in showers was read. Other organizations are working on presentations also. There is a person that is working for Volar that spent months looking for an apartment. People don't tend to complain when they are looking for an apartment. They will go look at another one. They are only looking at one aspect of this which is wheel chair access instead of the whole picture, which is mobility accessibility. With a power point presentation, the situation as it is now can be shown, and that situation is going to be multiplied by what is going on now with the realignment of Fort Bliss. It would be bad policy to go back on the requirements at this time. Fort Bliss should be able to provide numbers on the families that have children with special needs or families with special needs. Housing was called and left messages, but no one called them back. Call the public information officer and ask what percentage has special needs for the military in general. They will have their own figures for the families and the numbers should be pretty close to what is in the community. There was a blueprint that was sent to Mr. Schonberger and Mr. Walton that was put together by Cornell University that breaks down disability and incomes in the State of Texas. Mr. Reed was asked to put the numbers from the Cornell study so that it can be included in the power point. The information will deal with disabilities and income. The medium income for persons with a disability in Texas is \$34,000. For persons without a disability it is \$36,000. Fort Bliss has a liaison to the schools, and she may be able to provide information on the number of children that are coming in. Disability as a whole should be looked at, not just mobility disability. Information that was presented by the UTEP Institute on Policy in 2003, 122,598 people are coming in, of that 80,000 are retirees and family members, 16,000 are military family members, 7,300 are civilian work force, the active military is over 17,000. These numbers were projected in 2003. Use those numbers and project them on to the general numbers and you have a pretty good idea of how many are disabled. 18 percent of the population has a disability then you have 18 percent of the number. According to the US Census about 18 percent of the individuals are going to have some sort of disability that qualifies under ADA. Mr. Bohannon is going to play the wheel chair card, but what the committee needs to do is show that it is all disabilities, not just wheel chairs, that need to be looked at. Individuals with disabilities that need accessible apartments are not just individuals in wheel chairs. A lot of individuals with cognitive or seizure disabilities like to have a walk in shower with a bench because it is safer than a tub.

A motion was made, seconded and unanimously approved to adjourn the meeting at 3:50 p.m.