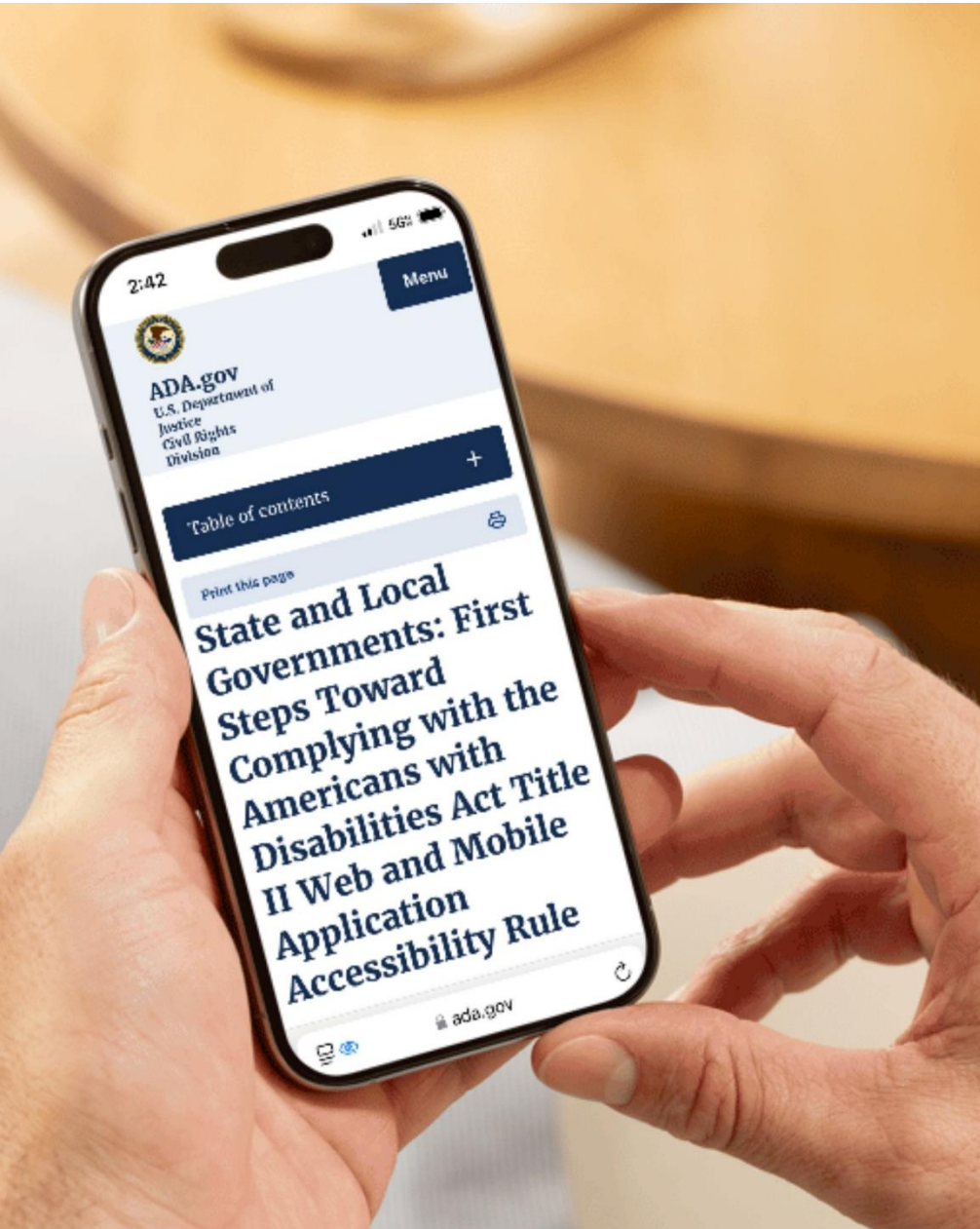




ADA Title II Web and Mobile App Accessibility Rule: Moving Towards Compliance at the City

Tricia Juettemeyer, Assistant City Attorney
Laura Shepard, Director of Communications
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Why are we here?

Orienting to Title II of the Americans with Disabilities Act - 42 U.S.C § 12131 et. seq.

- No 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 U.S.C. § 12132.
- Title II Violations: inaccessible public buildings, unequal access to Parks & Rec programs, failure to provide accessible city sidewalks, failure to provide curb ramps, and potentially: "anything a public entity does".¹
- DOJ Civil Rights Division: can engage in enforcement actions
- Private Right of Action under Title II (no administrative exhaustion required)²



Website accessibility under Title II is not new

Selected DOJ enforcement actions

- November 2023: four Texas counties received letters related to a complaint that their election websites discriminated against persons with vision and manual disabilities (each letter provides certain remedial measures the agencies must undertake).
- January 2024: Service Oklahoma, a state agency, violated Title II by offering an inaccessible mobile application.
- March 2024: City of Virginia Beach enters a Settlement Agreement with the DOJ for website accessibility violations.³



Title II web accessibility case law is sparse

The why begets the rule

- 1996: DOJ establishes that the ADA covers digital services (but no specific parameters).⁴
- "[While] Title II undoubtedly applies to public entity's websites, there is no guidance from the DOJ about what a government entity must do to make its website ADA compliant." *Price v. City of Ocala*, 375 F. Supp. 3d 1264 (2019).
- *Ellerbee v. La. Div. of Admin.* (2025) worth reviewing: walks through plaintiff issues, describes forthcoming rule, history, acknowledges case law gap.⁵



Probably Not Anymore

Private Right of Action under 42 USC § 12133

- A plaintiff must allege: "(1) that [they are] a 'qualified individual with a disability;' (2) that [they were] 'excluded from participation in or ... denied the benefits of the services, programs, or activities of a public entity' or otherwise 'discriminated [against] by such entity;' (3) 'by reason of such disability.'" *Shotz*, 256 F.3d at 1079 (quoting § 12132)." *Price v. City of Ocala*, 375 F. Supp. 3d 1264 (2019).
- To obtain compensatory damages in a civil lawsuit, a plaintiff must show that the Title II entity's violations constitute intentional discrimination, that is, act with intent or deliberate indifference in its failure to accommodate a disabled person.⁶
- Injunctive relief, discretionary prevailing party attorney's fees / costs⁷



The forthcoming rule under Title II

Requirements for web and mobile accessibility - 28 CFR § 35.200

- Title 28, Ch. 1. Part 35, Subpart H. § 35.200
- (1) Beginning April 26, 2027, a public entity, other than a [special district government](#), with a [total population](#) of 50,000 or more shall ensure that the web content and mobile apps that the public entity provides or makes available, directly or through contractual, licensing, or other arrangements, comply with Level A and Level AA success criteria and conformance requirements specified in WCAG 2.1, unless the public entity can demonstrate that compliance with this section would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.
- (2) Same language, April 26, 2028, for less than 50,000.



Coming attractions

The standard has changed. 28 CFR § 35.202 and § 35.203

- Accommodating alternative access versus same access.
- Requiring a disabled person to do more than a non-disabled person to access the government's services, programs, or activities is no longer sufficient to meet a disabled person's accessibility needs.
- § 35.202 A public entity may use conforming alternative versions of web content, as defined by WCAG 2.1, to comply with this section only where it is not possible to make web content directly accessible due to technical or legal limitations.
- § 35.203 Equivalent Facilitation – can use designs, methods, techniques as alternatives to those prescribed if they result in substantially equivalent or greater access and usability.



Web Content Accessibility Guidelines

Developed by W3C, WCAG is the global standard

- Guidelines to ensure web content is accessible to all users, including those with disabilities
- Four main principles⁸
 - Perceivable – be able to access and understand regardless of technology or disability
 - Operable – usable regardless of ability, access using devices besides a keyboard
 - Understandable – easy to navigate, read, and understand
 - Robust – work with different technologies
- WCAG 2.1 Level AA selected after soliciting feedback for appropriate standard⁹



The content and the documents

Requirements for web and mobile accessibility - 28 CFR § 35.200

- Compliance includes:
- Making all online content accessible – website, mobile apps, social media, videos delivered online, live streams
- These document types must be fully accessible
 - PDFs (.pdf)
 - Word Processor (.docx, .odt, .pages, .txt)
 - Spreadsheets (.xlsx, .csv, .ods)
 - Presentations (.pptx, .odp)



That seems like a lot (it is)

Exceptions exist under 28 CFR § 35.201! But they're limited...

- Some content is not required to be accessible on or after the effective date.
 - (a) Archived web content
 - (b) Pre-existing conventional electronic documents
 - (c) Content posted by a third party
 - (d) Individualized password-protected documents or otherwise secured conventional electronic documents
 - (e) Preexisting social media posts
- Catch-all: Fundamental Alteration & Undue Burden (but not quite a catch-all)



Fundamental alteration and undue financial or administrative burden

28 CFR § 35.204

- Demonstrate that compliance would create
 - A fundamental alteration of the nature of the service, program, or activity
 - an undue financial and administrative burden
- If your municipality believes it will, you have the burden to prove it.
 - Decision about fundamental alterations or undue burdens must be made by the head of your municipality or designee after considering all resources available for use in the funding and operation of the service, program, or activity
 - Accompanied by a written statement of those reasons
 - And still must comply to ensure persons with disabilities receive benefits or services provided to the maximum extent possible



Noncompliance with minimal impacts

28 CFR § 35.205

- If the entity is not in full compliance, but noncompliance has minimal impact on access, it will be deemed in compliance.
- An individual with disability must be able to use web content, mobile apps, and do the following in a way that provides substantially equivalent timeliness, privacy, independence, and ease of use:
 - Access the same information as those without disabilities
 - Engage in the same interactions
 - Conduct the same transactions
 - Otherwise participate in or benefit from the same service programs and activities



From Legal Mandate to an Accessible User Experience

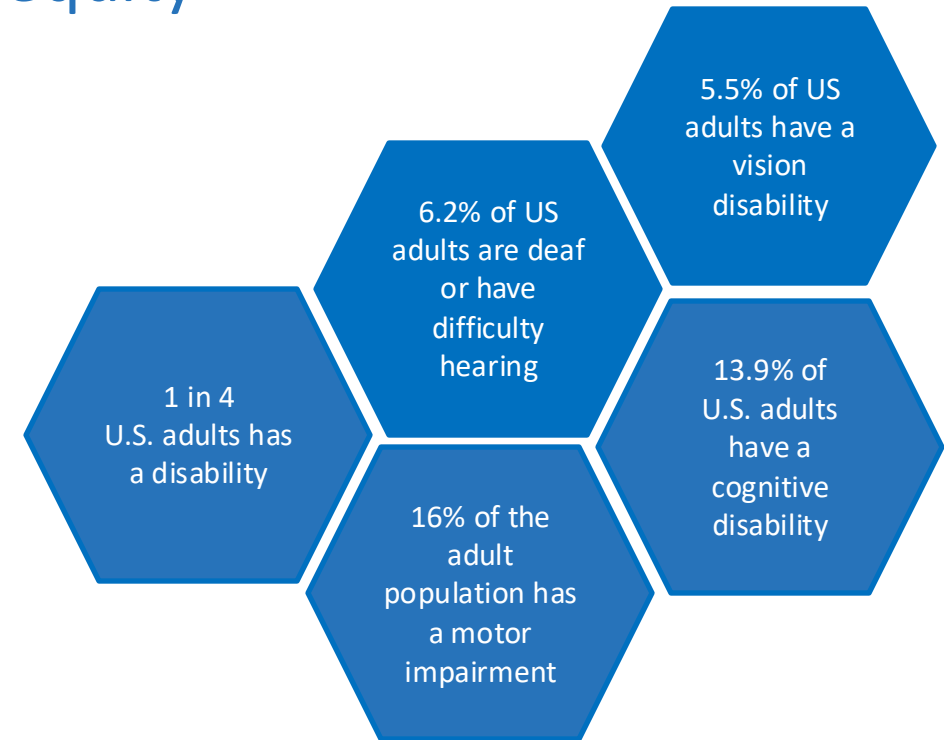
Operationalizing the new rule



What is digital accessibility

Accessibility removes barriers and fosters equity

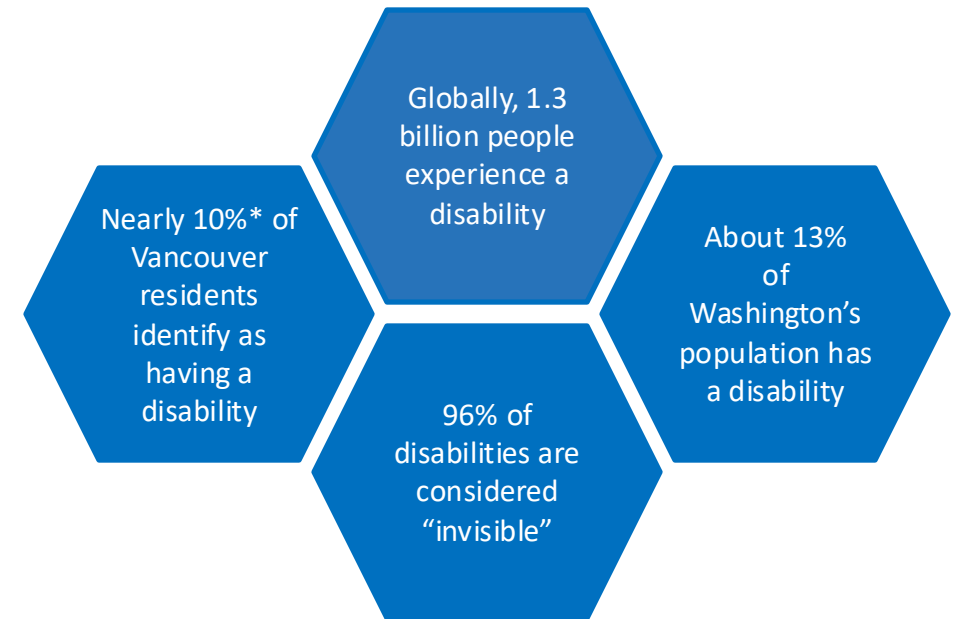
- Digital accessibility refers to the ability of people with disabilities or impairments to independently consume and/or interact with digital content
- Common disabilities/impairments
 - Visual
 - Hearing
 - Motor
 - Cognitive



Ensuring equitable access to services

Vital to our work in local government

- Equity and inclusion are part of our work
 - City Council's policy priorities
 - City's vision and values
 - City's Strategic Plan
 - Comprehensive Plan
 - Communication policies
 - Procurement policies
 - Technology policies



Clear leadership, collective action

The entire agency is responsible for compliance

- One owner convenes and drives the project
 - Aligns work across the organization
 - Leads task owners, drives accountability
 - Has authority to create enterprise-level policy, standards, and training
- Entire organization participates
 - City Council
 - Department Directors
 - Content creators
 - Tool/product owners
 - Procurement
 - Information Technology
 - Human Resources
 - City Attorney's Office...



Legal is critical to this work

Project lead should have an attorney on speed dial

- Validates and questions decisions related to compliance and undue burden
- Can help work through hypotheticals and “what-ifs”
- Advise on usability tools
- Advise on potential over-compliance



City's compliance roadmap

We've been working for over a year and a half

Discovery Phase Feb-June 2025	• Clarify rule application • Website, App, and Software audit • Explore training options
Develop Plan Summer 2025	• Develop remediation strategy • Determine allowable exceptions • Establish required training for staff
Execute Plan 2025/2026	• Multi-track remediation and compliance plan • Publish standards • Training plan and tools (staff and City Council) • Deadline extended; keep going
Sustaining 2027 - ongoing	• Monitor platform compliance • Continue training for staff and new hires • New web strategy and site



Website audit overview and methodology

Evaluated cityofvancouver.us against WCAG, 2.1 Level AA

- Conducted an independent, third-party audit in the summer of 2025
- Automated and manually tested for conformance
 - Screen readers - NVDA with Firefox, NVDA with Edge, VoiceOver with Safari, Adobe Acrobat Accessibility Checker & others
- Site testing included
 - Keyboard-only users, text zoom, color contrast, screen reader compatibility
- Main issues
 - Development, layout choices, and not following web conventions for accessibility
 - Over-reliance on PDFs and documents



Website remediation

More than 2,437 documents representing 32,000+ pages

- Resolved functionality issues with our site vendor
- Worked with departments to determine the status of content
 - Remove
 - Archive
 - Remediate
 - Pre-existing document
 - Undue burden
- Remediation and replacement work continues
- Explore solutions for undue burden documents
 - 550+ Computer-Aided Drawings (CAD)



Additional platforms

More than just the City's website

- All 23 app vendors have provided a Voluntary Product Accessibility Template (VPAT) or remediation plan
- ESRI/Geographic Information System (ArcGIS, VPAT provided)
- Social media
- Council Agenda platform (Civic Plus)
- Clark/Vancouver Television (CVTV)
- City Data Hub (document audit pending, VPAT provided)
- BeHeard engagement tool (document audit pending VPAT provided)



Standards and training 1 of 2

Capacity building to sustain compliance

- Developed and issued standards
 - Website content
 - Social media and videos
 - Preparing, presenting, presiding, and participating in City Council/broadcasted meetings
- Required training for employees on how to create accessible documents



Standards and training 2 of 2

Accessibility is now a requirement to do business with the City

- Work delivered to the City by contractors/vendors/professional services must be provided in a branded, accessible format
 - Accessibility language added to RFPs and contracts
 - Accessibility review required to purchase software and tools
- City is providing standards and access to branded templates



Sustaining accessibility

Integrated into how the City operates

- Baked into purchasing requirements
- Regular audits and ongoing monitoring
- Continued training and skill-building
- Identify additional tools to aid and enable accessibility
- Opening an RFP for a new website (curated, accessible, AI-ready)
 - Reevaluate workflows and governance for the website
- Created a new role, Digital Accessibility Coordinator





Resources and Data Sources

- DOJ/ADA Complying with Rule:
<https://www.ada.gov/resources/2024-03-08-web-rule/>
- CDC Disability Statistics:
<https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html>
- World Wide Web Consortium (W3C):
<https://www.w3.org>





Footnotes

1. See: *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002).
2. 28 C.F.R. § 35.172(d)
3. See: <https://www.ada.gov/cases/>
4. See: *Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 574 (D. Vt. 2015)
5. *Ellerbee v. La. Div. of Admin.*, No. 3:24-CV-00219, 2025 LX 108772 (M.D. La. Jan. 28, 2025)
6. See: *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138 (9th Cir. 2001)
7. 42 USCS § 12133 and § 12205
8. See: <https://www.w3.org/WAI/standards-guidelines/wcag/> and <https://www.w3.org/WAI/WCAG22/Understanding/intro#understanding-the-four-principles-of-accessibility>
9. See: <https://www.ada.gov/assets/pdfs/web-rule.pdf>



Questions and Discussion





Back-up slides



Let's talk about documents

As defined by the DOJ in the final rule

- An electronic document is defined as web or mobile content that is in the following file formats:
 - PDFs
 - Presentations (PowerPoint/PDFs of PowerPoint)
 - Spreadsheets
 - Word documents



Let's talk about videos

Includes videos produced for social media

- Closed captions (all dialogue and relevant sounds)
- Audio descriptions (verbal narration of visuals, actions, scenes, expressions)
- Transcripts (complete text of audio, sound effects, music, etc.)



Let's talk about social media

Includes all social media platforms

- Excludes social media posts made before the April 2027 deadline
- This includes videos created for social media
- All social media posts must:
 - Alt text to describe images
 - Audio descriptions for videos (verbal narration of visuals, actions, scenes, expressions)
 - Easy-to-understand posts
 - Limit emoji use

