

December 7, 2021

Mary Hull Caballero
City Auditor of Portland
1221 SW 4th Ave., Room 310
Portland, OR 97204

Via email at Mary.HullCaballero@portlandoregon.gov

Ms. Hull Caballero:

Thank you for reaching out to Disability Rights Oregon to seek comment regarding your forthcoming audit of Portland's emergency and disaster response process. DRO shares the grave concerns reflected in the audit about the inadequate inclusion of people with disabilities in disaster preparedness planning and the lack of consideration of their needs in existing plans and past disaster response.

When people with disabilities are not considered and involved in disaster planning, people with disabilities die needlessly in the next disaster, often in large numbers. Disaster planning must seriously engage the needs of people with disabilities and make detailed, case specific plans. Planning to develop a plan during a disaster, vague assurances that authorities will accommodate people with disabilities, and generally asserting that authorities will somehow make facilities accessible in the middle of a disaster are not real plans.

These problems are not unique to the Portland Bureau of Emergency Management (PBEM). Inclusion of people with disabilities in disaster planning is also poor at the state and county level across Oregon. In a state prone to earthquakes, heat waves, forest fires, tsunamis, and even volcanic eruptions, the unique needs of people with disabilities must be considered and included in disaster planning. People with disabilities may not be able to evacuate themselves from danger without assistance and planning, may need accessible shelter, may have unique needs while in a shelter, and may be uniquely susceptible to communicable disease, wildfire smoke, heat, or other elements of a disaster.

Providing Accessible Emergency and Disaster Response Requires a Self-Evaluation and Transition Plan

The City of Portland needs to engage in a serious and detailed self-evaluation and transition

plan for its Bureau of Emergency Services. Under the Americans with Disabilities Act (ADA), each government agency must complete a “self evaluation.”¹ That means that each agency must meet with members of the disability community to look at all of its services and figure out which services are well-designed to meet the needs of people with disabilities. For those services that do not meet the needs of people with disabilities, the agency needs to develop a “transition plan” to ensure that all its services can be made accessible to people with disabilities. This does not mean just looking for physical barriers, like whether each public restroom meets ADA standards or whether there are steps but no ramps into some facilities. Looking for those physical barriers is important, but the self-evaluation means finding all the ways the *services* offered by government agencies may be inaccessible.

That requirement includes assessing whether the city’s emergency plan considers the needs of people with disabilities. A useful reference to consider is the U.S. Department of Justice’s publication “Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities.”² Typical questions one might ask in that self-evaluation process are:

- Are there buses or other transportation to help people with disabilities evacuate from areas of danger—such as after an earthquake or during a forest fire?
- Are those buses physically accessible? Are the accessible places adequate to handle demand for them?
- Are public announcements accessible to people who are deaf or blind?
- Are cooling centers/warm up centers used during weather extremes physically accessible?
- How does PBEM plan to get people to those cooling centers/warming centers during weather emergencies?
- How can PBEM identify the right people to contact and use the right methods to contact people with disabilities so they know where to go and what to do?

Under federal law, those self-assessments and transition plans should have been accomplished **by 1992**. Portland has a very rough city-wide transition plan around removal of physical barriers in city buildings, but has no self-assessment or transition plan around the overall accessibility of its programs and agency operations. In its 2014 barrier removal transition plan, the city identified the need to “complete a self-evaluation of city programs, activities, and service.”³ Seven years after noting that unmet need and almost 30 years after the ADA required it,

¹ 28 CFR 35.105.

² U.S. Dep’t of Justice, Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities (2008) at <https://www.ada.gov/emergencyprepguide.htm>; see also Fed. Emerg. Manag. Admin., Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters, Nov. 2010, www.fema.gov/pdf/about/odc/fnss_guidance.pdf.

³ City of Portland, ADA Title II Transition Plan Update, Oct. 2014, at 73, at <https://www.portlandoregon.gov/oehr/65426>

Portland has done nothing to evaluate systematically whether its services are accessible to people with disabilities, including its emergency response.

In the absence of a systematic review conducted with input from people with disabilities, even well-intentioned government employees will likely be guessing at how to adjust their services to accommodate people with disabilities. Conducting such a complete review is particularly important in the context of emergency and disaster response, because trying to change radically how services are delivered in the middle of an earthquake, fire, pandemic, or heat emergency will be extremely difficult or impossible. Many changes will take far longer to complete than the disaster will last. Pre-planning for specific disasters, including how to serve people with disabilities, is essential.

Disasters Often Injure and Kill People with Disabilities and Other Vulnerable People

When governments do not adequately plan for disaster response in a way that includes everyone, people whose needs are already neglected, including people with disabilities, end up being the ones who die.

Consider the evacuation before Katrina in New Orleans: an ill-planned, late evacuation order was issued mere hours before the hurricane struck. People who were wealthier and more mobile got in their cars and left. People who were poor, people who were elderly, and people who were disabled often had no cars to get into. Government officials made little effort to evacuate those who didn't have private cars. Those who couldn't evacuate themselves were most often those who drowned, or who were stuck for weeks on end in a flooded city. 71% of the people who died in Katrina were over 60, and people with disabilities were widely overrepresented in those left behind.⁴ At least 68 nursing home residents died after no effort was made to evacuate them.⁵

More recently, Hurricane Irma struck Florida in 2017. While some people died as an immediate consequence of the storm, hundreds more people with disabilities died in nursing homes and assisted living facilities that sweltered in the Florida heat while power remained out for long periods of time. About 433 deaths took place at nursing homes that were related to the heat and power outages. People living in nursing homes are definitionally all people with disabilities.⁶

⁴ Admin for Comm. Liv., U.S. Dep't of Health & Human Servs., No One Left Behind: Including Older Adults and People with Disabilities in Emergency Planning (2015) at <https://acl.gov/news-and-events/acl-blog/no-one-left-behind-including-older-adults-and-people-disabilities>

⁵ Nat'l Council on Disabilities, The Impact of Hurricanes Katrina and Rita on People with Disabilities: A Look Back and Remaining Challenges (2006) at <https://ncd.gov/publications/2006/aug072006>.

⁶ Bailey LeFever, Hundreds of Florida Nursing Home Residents Likely Died Indirectly from Hurricane Irma, Study

More locally, we know that in recent Oregon disasters, people with disabilities have often been among the worst affected. During the COVID pandemic, 1676 COVID-related deaths have taken place at facilities that exclusively serve people with disabilities.⁷ That means at least one of every three Oregonians who died of COVID was a person with a disability,⁸ though the number is likely far higher because no city, county, or state authorities track comprehensive data regarding people with disabilities who die outside a care facility.

During the heat wave in June 2021, authorities have reported 116 deaths, of which 72 took place in Multnomah County.⁹ No public entity has attempted to analyze the death totals by disability status, but DRO is in the midst of reviewing the death reports for exactly this purpose. Although we are continuing to wait for some death reports, DRO's tentative analysis to date indicates that a significant majority of people who died in the heat wave had a disability of some sort.

Missed Opportunities by Portland's Emergency Management System

The PBEM points to several steps it has taken to reach out to or to offer services to people with disabilities during the pandemic in its response. These efforts are just the kind of well-intentioned but limited, ad hoc, and haphazard steps that occur without conducting the kind of self-assessment described above and required by law.

The PBEM touts its efforts to reach out to miscellaneous community organizations, without to stating how many of them were organizations of people with disabilities. I consider myself to be actively involved in advocating for inclusion of people with disabilities in emergency and disaster planning. I actively participated in the Portland Metropolitan Region Recovery Framework Project in 2018, which was led by an employee of PBEM. Since that time, no one from PBEM has reached out to me or communicated about the needs of people with disabilities in emergency planning.

In a 2016 report, the consultant hired to organize that project reported that the PBEM's Emergency Operations Draft mentions people with disabilities only in a "standard demographic profile" and once in a "list of planning assumptions." Otherwise, the PBEM has "no further mentions" of people with disabilities at all in its planning for emergency and disaster

Finds, Tampa Bay Times, Oct. 12, 2020, at <https://www.tampabay.com/hurricane/2020/10/12/hundreds-of-florida-nursing-home-residents-likely-died-indirectly-from-hurricane-irma-study-finds/>.

⁷ Or. Health Auth., Weekly Outbreak Report, Dec. 1, 2021, at 80, at <https://govstatus.egov.com/OR-OHA-COVID-19>.

⁸ Contemporary reports for the Oregon Health Authority state there were 5268 deaths in Oregon from COVID in total. *Id.*

⁹ Ardeshir Tabrizian, Oregon's Heat Wave Death Toll Grows to 116, *The Oregonian*, July 7, 2021, at <https://www.oregonlive.com/data/2021/07/oregons-heat-wave-death-toll-grows-to-116.html>.

response.¹⁰ While the report stated PBEM was updating its plan documents, it is unclear how, if at all, those updated plans meaningfully included people with disabilities either in their process or in their outcomes. For instance, the RDPO report states that, as of 2016, PBEM was updating its debris plan to understand how debris clearing could affect people with disabilities¹¹ However, PBEM's debris-clearing plan hasn't been updated since 2014. Whatever changes PBEM was considering could not have actually been made. PBEM's response certainly does not claim that it has adopted plans that meaningfully include people with disabilities, does not address how plans developed between 2016 and 2019 (before COVID) incorporate people with disabilities, or otherwise address the needs of people with disabilities. As early as 2012, a tabletop exercise by PBEM revealed a need for "[m]ore ADA-accessible facilities to house" people with disabilities in the event of an emergency, but no follow up in nine years indicates that the city has made any progress in identifying such accessible shelter.¹²

The existing disaster plans show minimal real consideration of the needs of people with disabilities. Most plans either don't mention people with disabilities or mention them in passing without developing any plans to meet their needs.¹³ The evacuation plan, for instance, generally states that shelter reception areas will "be ADA accessible or will be modified to accommodate people with disabilities."¹⁴ The plan is vague on where people will be sheltered, mentioning as possibilities "Red Cross shelter locations, BEECN [Basic Earthquake Emergency Communication Node] sites, or Portland Parks and Recreation facilities." The plan does not indicate which, if any, of those proposed sites are physically accessible, nor does it explain how any of them would be "modified to accommodate" people with disabilities. Most BEECN sites and parks facilities are open fields and parks with few hard surfaces where a person using a

¹⁰ Regional Disaster Preparedness Organization, Disabilities, Access and Functional Needs Inclusive Planning Assessment (2016), at 41 https://rdpo.net/s/RDPO_DAFN_Regional-Report_122216_FINAL.pdf. The Basic Emergency Plan for the city states that: "Disasters can be particularly harmful to vulnerable residents," including "the . . . disabled." City of Portland, Basic Emergency Operations Plan, at 8, at <https://www.portlandoregon.gov/pbem/article/135813>. After acknowledging this point, the Basic Emergency Plan then utterly ignores people with disabilities in its content.

¹¹ *Id.* at 42.

¹² City of Portland, Portland LEAP Report (June 2012), at 54, at <https://www.portlandoregon.gov/pbem/article/389162>.

¹³ The Emergency Public Information Plan and the Alert and Warning Annex mention the word "disability" once each in passing and make no provision for accommodating people who are deaf or blind in communications. City of Portland, Portland Emergency Public Information Plan (2017) at <https://www.portlandoregon.gov/pbem/article/665464>; City of Portland Alert and Warning Annex (2017) at <https://www.portlandoregon.gov/pbem/article/352777>. People with disabilities are not even acknowledged in the flood plan or debris management plan. The Earthquake Plan makes the underwhelming concession that: "As resources permit, shelters will be adapted to accommodate populations with specific access or functional needs (individuals with disabilities, the medically fragile, elderly as well as the groups and organizations that support these individuals)." City of Portland, Earthquake Plan, at 43 (2012), at <https://www.portlandoregon.gov/pbem/article/382005>.

¹⁴ City of Portland, Evacuation Plan (2017), at 24, at <https://www.portlandoregon.gov/pbem/article/668061>

wheelchair could travel and find a place to rest, and limited or no facilities where a person with unique needs could charge medical equipment or an electric wheelchair, administer medication, keep medication refrigerated, or meet other basic disability-related needs. None of these open-air fields are well equipped to keep people warm, cool, dry, or safe. Portland Parks has already identified substantial lack of physical accessibility in its facilities, finding more than 20,000 inaccessible features at 260 different locations.¹⁵ A plan to use accessible facilities, without identifying which facilities are accessible, or to “modif[y] existing facilities” to be accessible, without identifying what modifications need to be made or how those modifications would happen in the midst of a disaster, is not a plan at all. The PBEM’s evacuation plan regarding shelter is vague to the point of being wishful thinking.

The lack of serious planning around shelter and communications for people with disabilities was exposed recently during the June 2021 heat wave, when many people could not find a cooling center that they could physically access. Many people were stuck in unairconditioned homes, RVs, trailers, and apartments unable to either get information about where to go or, if they were able to get that information, to find a ride there. A Facebook post on June 24 from PBEM reposted guidance from Multnomah County that cooling centers were available at the convention center, Arbor Lodge, and the Sunrise Center, as well as 5 Multnomah County library sites (open only from noon to 8pm), but provided no information on how to get there.¹⁶ PBEM’s notice also went out only via social media. Although the communications plan indicates that PBEM would use the Public Alerts system to tell people about emergencies and how to a safe place, PBEM did not even use the limited Public Alert service to tell people how to get to cooling centers.¹⁷

Dozens of people in Portland died in that heat wave, most of them with disabilities. I can find no indication that PBEM made meaningful efforts to reach people with disabilities, to help them get to cooling centers, or otherwise protect them from a serious emergency. The three sites mentioned by PBEM that were open more than 8 hours at a time, during a heat emergency when extraordinary heat stretched from the early morning till late at night, were located only in Gresham, in far North Portland, and on the inner East Side. Many people were miles away from the nearest full-time shelter, with no obvious way to get to any of these sites. When agencies fail to plan with specificity for how to evacuate people with disabilities to safety in a disaster, the usual outcome is not that someone makes up a great disaster response plan in

¹⁵ City of Portland, Portland Parks and Recreation Supplement to ADA Transition Plan, 2015, at <https://www.portlandoregon.gov/oehr/article/534557>.

¹⁶ Portland BEM, June 24, 2021, at <https://www.facebook.com/PortlandBEM/posts/5934922873216891>.

¹⁷ Multnomah Co., *City-County Send First Joint Wireless Emergency Alert on Heat*, to <https://www.multco.us/help-when-its-hot/news/city-county-send-first-joint-wireless-emergency-alert-heat> (noting that messaging around June heat wave failed to reach people and that City & County sent first Public Alert regarding heat danger on July 28, 2021).

the moment. The usual result is that people with disabilities die needless, preventable deaths. And that is exactly what happened in Portland in June 2021.

Conclusion

The audit's concerns about the lack of inclusion of people with disabilities in the disaster planning process are very well taken. The City of Portland and other governmental agencies across Oregon need to engage with people with disabilities to ensure that meaningful plans for disaster response meet their needs. This process is both necessary and required by law. It is a shame that Portland has gone decades neglecting this basic duty to people with disabilities. Too many people with disability have died for lack of inclusion in disaster planning.

Sincerely,

/s/

Thomas Stenson
Deputy Legal Director
Disability Rights Oregon