



# CITY of RAPID CITY

RAPID CITY, SOUTH DAKOTA

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## COMMUNITY RESOURCES DEPARTMENT Communications Division

**FOR IMMEDIATE RELEASE**

### **JUSTICE DEPARTMENT NOTIFIED CITY IN 2012 OF ADA 'COMPLAINT'**

*At same time federal agency conducted internal review and tour of Civic Center*

**RAPID CITY**--In August 2012, Department of Justice officials did a 'walk-through' investigation of the Rushmore Plaza Civic Center as part of an internal review of city and county facilities for compliance of the Americans with Disabilities Act (ADA). Later that month, the Department of Justice's Civil Rights Division wrote Rapid City Mayor Sam Kooiker the federal agency had received a complaint the facility was in violation of the ADA.

The August 17, 2012 letter to the City came from Jana Erickson, Deputy Chief of Enforcement of the Disability Rights Section of the Justice Department. It read, "The Department of Justice has received a complaint alleging that the Rapid City Convention Center in Rapid City, South Dakota, has violated Title II of the Americans with Disabilities Act of 1990 (ADA)."

The letter indicated the agency had opened an investigation of the 'complaint', a word used four times in the five-paragraph letter. The correspondence indicated one of their investigators would contact them "soon" to provide further information about the allegations in the complaint and how the matter could be "promptly resolved" In addition, the letter included a file number, which was important for Civic Center board member Jeff Bailie.

"When a file number is assigned, that means a complaint has been filed," said Bailie. "We had no idea what the problem was. We didn't know if it was about something inside the facility or outside the facility. But we took it as very credible for many reasons, not the least of which a file number had been assigned."

Over the next 27 months, a number of actions took place.

**\*City and Civic Center board officials made numerous requests for specific information on the complaint, including the filing of two Freedom of Information (FOIA) requests and one appeal. After continued lack of response, assistance was sought from South Dakota's two senators to obtain the requested information.**

**\*In 2013, with concerns mounting over the lack of response and the Justice Department 'complaint' letter, the Civic Center Board, at the request of the Civic Center's Futures Committee commissioned a \$25,000 independent study to review and identify ADA compliance and potential violations. The study identified several hundred ADA, code and other violations in the facility.**

**\*In April 2014, the Justice Department responded to the FOIA appeal, stating "there is no signed complaint document".**

**\*Four months later, in August 2014, based on findings of the 'walk-through investigation' of August 2012, the agency issued a settlement demand to the City of Rapid City regarding ADA compliance violations.**

**\*After the settlement demand, Mayor Kooiker addressed the overall issue including the complaint status, in media interviews, Council discussions and in an e-mail communication with Civic Center officials and board member Jeff Bailie, along with City Attorney Joel Landeen.**

**The September 22, 2014 e-mail has a subject line of 'Civic Center & Americans with Disabilities Act' and states in its entirety:**

*"A few years ago we began a quest to understand the confusing "complaint" terminology referred to in correspondence from the Dept of Justice. Until recently, we were under the impression an outside party had filed an actual complaint with DOJ. Civic Center Board Chairman Jeff Bailie has done additional follow-up with DOJ since his receipt of the attached 4/16/14 letter -- He was recently contacted by a DOJ official who explained the use of the term "complaint" was a mistake, as no outside party had contacted DOJ regarding access issues at the Civic Center.*

*In conclusion, the list of corrections in the recent DOJ settlement agreement was triggered by DOJ's 2011 visit to Rapid City." [The federal agency's visit was in August 2012.]*

**\*On November 17, 2014, the City Council unanimously approved and the Mayor signed a settlement agreement between the City and the Justice Department (Council agenda item 40. [No. LF102914-24](#) - Authorize Mayor and Finance Officer to Sign a Settlement Agreement between the United States of America and Rapid City, South Dakota Under the Americans with Disabilities Act). The agreement is pending signature from the Justice Department. Once the agency provides signature, the City has 30 months to comply with terms of the agreement to bring the facility into ADA compliance. There has been confusion in local media about the settlement agreement, and some have referred to it as a lawsuit. It is not a lawsuit per se, rather it is a mutually agreed-to settlement with DOJ to avoid additional enforcement action, which could include a lawsuit.**

"We hit the ground running to learn more about the complaint," said Bailie. "We wanted to learn who had complained, but more importantly we wanted to know the specifics behind the complaint to see what we could do to resolve the issues. The Civic Center board made no secret of its frustrations with the lack of response. There was no interest at the time from the media. There was no response to our numerous inquiries and no response to the inquiries from our senators.

"Ultimately, they found us in violation of compliance with the ADA," said Bailie. "Coupled with our own study that identified hundreds of ADA and code violations, it was necessary to sign the agreement with the Justice Department. I believe the responsible thing for our community to do is to take action to rectify the infractions that we have become increasingly aware of over the past decades. The time has come for us to quit kicking the can down the road and address the known violations."

Mayor Kooiker agreed.

"Some are saying the lack of a complaint filed by a person with a disability is a smoking gun," said Kooiker. "The reality is the 25 years of ignored ADA issues at the Barnett Arena is the true smoking gun. Our citizens and visitors with disabilities have been denied proper access to the Barnett Arena for 25 years. The ADA is civil rights legislation, and it's time to have a path to compliance."